

TITLE 5. EDUCATION
Division 7.5
Chapter 2
Article 6

DEPARTMENT OF CONSUMER AFFAIRS

Bureau for Private Postsecondary Education

Final Statement of Reasons

Subject Matter of Proposed Regulations: Expired Approvals.

Sections Affected: Sections 71475 and 71480 of Article 6 of Chapter 2 of Division 7.5 of Title 5 of the California Code of Regulations (CCR).

Updated Information

The Informative Digest and Initial Statement of Reasons (ISOR) are included in the rulemaking file and incorporated as though set forth herein.

The information contained therein is updated as follows: No changes have been made to warrant a change to the ISOR as contained in the original notice for sections 71475 and 71480.

The Bureau for Private Postsecondary Education (Bureau) noticed the proposed rulemaking via email listserv on February 14, 2025, with a 45-day comment period ending on April 1, 2025.

The Bureau received four comment(s) during the comment period. There were no requests for a public hearing and no separate public hearing was held.

Local Mandate

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

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would be more effective in carrying out the purpose for which it was proposed or would be as effective and less burdensome to affected private persons than the adopted regulations or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Bureau incorporates by reference the alternatives identified

in its ISOR and did not receive any comments that altered its findings.

Summary of Comments Made During the 45-day Notice Period:

The 45-day comment period began on February 14, 2025 and ended on April 1, 2025. The Bureau did not hold a hearing.

The Bureau's summary of and response to the comment(s) received is presented below.

Comment 1: Robert Johnson, California Association of Private Postsecondary Schools, February 28, 2025

Summary of Comment:

The commenter opposed the provision that only allows an institution up to 30 days to submit a penalty-free renewal application before it is terminated by operation of law. The commenter stated that no process exists for institutions to be aware of their impending expiration. The comment notes that no approval date is ever the same, and that many schools do not realize that their approvals have expired, particularly when the same application is submitted repeatedly. Additionally, the comment stated that the existing six-month grace period provided by the Bureau was intended to buy time for the Bureau to work on the approval internally, but now the Bureau proposes reducing the six-month period to one month but makes no commitment to review the renewal on a timely basis if it is submitted on time or within the new 30-day period, which was the quid pro quo of the previous six-month regulation. The commenter suggested either to leave the regulation as is or to amend the proposed regulation and require a 90-day notice for an expiring authorization, with the reasoning that it gives time (for a cost) for institutions to submit a proper and complete renewal. The comment suggested that the late-penalty fees help the Bureau's income stream. The comment concludes by stating that "These amendments are the Bureau's plan to reduce their time for approval to escape being the worst approval Agency in the State. This comes at the expense of the Institutions, with no equitable balance between the regulator and the regulated."

Response to Comment:

The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The comment partially demonstrates the type of confusion that the Bureau aims to resolve. While the commenter calls the current regulatory standard a "six-month grace period" that is not the intent of the existing regulations. An institution that allows its approval to expire for several months should not continue operating without Bureau approval merely because it has the option to submit a late penalty. This impression is precisely why the Bureau pursued a shorter, penalty-free "grace period" of 30 days if the institution, for some reason, is unable to submit a timely renewal application. As

described on page one of the ISOR, in 2022, approximately one-third of all renewal applications received came after the date of expiration and a date six months later. As stated on pages four and eight of the ISOR, “The existing language ... is potentially confusing and could lead institutions to mistakenly believe that their Approval to Operate may be extended past the five-year expiration date for up to six months if they do not apply for renewal in a timely manner. The Bureau proposes deleting the existing language and replacing it with language that clarifies that an institution’s Approval to Operate expires at the end of the five-year term for an approval, but now with a 30-day grace period. The Bureau also proposes eliminating the confusing language about an approval being “cancelled” (a term not defined in statute or regulation) by operation of law and replace it with a new process by which an institution’s approval is terminated by operation of law if the institution has not submitted a renewal application within 30 days of the date its Approval to Operate expires.

As described on pages five and nine of the ISOR, a 30-day grace period is an appropriate amount of time for institutions that experienced some delay in preparing its renewal application, and establishes a timeframe consistent with other Bureau processes, such as appeal rights to Bureau decisions, timeframes in which the Bureau responds to institution requests, or substantive changes that institutions report to the Bureau.

The Bureau does remind institutions of their impending expiration and reaches out to contact information on file for the institution if the approval is set to expire. While this reminder process is not spelled out in regulation, the Bureau attempts to communicate its requirements to institutions and obtain timely applications as a business process. The Bureau hosts many workshops and maintains email and telephone lines should an institution have additional questions.

The proposed regulations and information found in the Notice of Proposed Action at pages four through five demonstrate that the Bureau will lose approximately seven thousand dollars from lost late penalty fees, but the existing amounts collected from late penalty fees do not buoy Bureau income.

The comment stating the Bureau is the “worst approval Agency in the State” is not germane to the proposed regulations.

Comment 2: Barbara Bickett, DeVry University, March 17, 2025

Summary of Comment:

The commenter opposed the provision that requires a complete application to be submitted in order for a valid approval to operate to remain in effect while the Bureau processes a renewal application. The commenter suggested amending sections 71475(hh) and 71480(f) to specify that so long as a “materially” complete application is submitted on or before 30 days after an institution’s approval to operate has expired, the

approval to operate should remain in effect while the Bureau processes a renewal application.

Response to Comment:

The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

As described on pages five and nine of the ISOR, it is necessary to specify that the renewal application must be “complete” to avoid a situation where an institution attempts to extend their Approval to Operate indefinitely by submitting an application lacking in some aspect, requiring the Bureau to notify the institution of the application’s deficiency and then wait for the institution to submit a revised application, ad infinitum. Moreover, the language requiring a complete application is an existing requirement that is simply being moved as part of clarifying the existing regulations, but the requirement itself (a complete application) has been a longstanding Bureau requirement. The suggestion to add “materially” is unnecessary in that it would require the Bureau to define the term, rather than continuing the longstanding requirement that an application be “complete.”

Finally, the statute for approval applications in Sections 94888 and 94890 of the Act state, in part: “Application processing goals and timelines to ensure an institution that has submitted a complete application for approval to operate [by means of its accreditation] has that application promptly reviewed for compliance within 30 days of bureau receipt of the application, or within an appropriate timeline as determined by the bureau. The timelines shall ensure that an institution that has submitted a complete and compliant application receives approval within 30 days of the application being deemed compliant by the bureau, or within an appropriate timeline as determined by the bureau.” While the Bureau has the authority to adopt regulations for the application renewal process in Section 94891, to have that process require a “materially complete” application, as opposed to a “complete application” raises additional concerns about changing the renewal requirement substantially from what is required in the initial application. Thus, the Bureau declines to make any amendments to the proposed text.

Comment 3: Legal Aid Foundation of Los Angeles, April 1, 2025

Summary of Comment:

The commenter opposed the provision that grants an institution a 30-day “grace period” in which an institution whose term of approval has ended may submit a complete renewal application, penalty-free, and still be considered to hold a valid approval to operate. The commenter shared the concern that a large proportion of schools – as much as one-third in 2022 – continue to operate and file applications for renewal for up to 6 months after their approval has expired. The commenter is concerned that proposal would allow a school to continue to operate for even 30 days after the expiration of its approval to operate due to the potential for “extensive student harm.” The commenter

suggests that the Bureau revise the proposed regulations to provide that schools may only continue to operate after their approval has expired if they submit a complete renewal application, on or before the date their approval expires.

Response to Comment:

The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

As described on pages five and nine of the ISOR, a 30-day grace period is an appropriate amount of time for institutions that experienced some delay in preparing its renewal application, and establishes a timeframe consistent with other Bureau processes, such as appeal rights to Bureau decisions, timeframes in which the Bureau responds to institution requests, or substantive changes that institutions report to the Bureau.

As described on page one of the ISOR, the Bureau proposes to clarify the requirements and process institutions must follow when their Approval to Operate is about to expire and they wish to continue to operate with approval from the Bureau. Institutions should continue to submit a complete renewal application when or before their approval term ends. However, if the Bureau took the position that an institution's approval be terminated by operation of law immediately following the last day of approval, the proposed regulations may have a significant impact on the regulated community. The result would be a rigid requirement that is not aligned with other Bureau processes and not an appropriate amount of time allowing for an institution that may experience a delay in preparing its renewal application. A short grace period is a reasonable balance between the Bureau not wanting to extend approvals without authorization and recognizing that unforeseen and uncontrollable situations might lead to slight delays in some circumstances, such as a mail delay, closures over a holiday weekend, illness, or other unforeseen circumstances. If an institution is more than 30 days late in submitting its renewal application, the tardiness is not something that can be disputed. Finally, as stated in the underlying data, in 2022, approximately 1/3 of the institutions submitted a late renewal application (50 institutions). However, of these 50 institutions, 37 submitted within 30 days, and only 13 submitted beyond 30 days. Among those 37 institutions, the median number of days the application was submitted post-expiration was 4.5. Therefore, the Bureau stands by its reasoning to keep a 30-day penalty-free period in which an institution can submit a complete application for renewal, and still have its approval to operate remain in effect until the Bureau processes that renewal application.

Comment 4: Emmanuel Rodriguez, The Institute for College Access and Success, April 1, 2025

Summary of Comment:

This comment is identical to Comment 3, please see summary above at pages 4-5.

Response to Comment:

The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon, for the same reasons as those listed in response to Comment 3 above on page 5.