

**TITLE 5. BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
DEPARTMENT OF CONSUMER AFFAIRS**

NOTICE IS HEREBY GIVEN that the Bureau for Private Postsecondary Education (hereinafter “Bureau”), Department of Consumer Affairs, is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, 1625 N. Market Blvd. Ste. N-102, Sacramento, CA 95834, at 10:00am, or as soon as practicable thereafter, on Tuesday, December 3, 2019. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office by December 2, 2019, or must be received by the Bureau at the hearing. The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposal if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested in Section 94877 of the Education Code, and to implement, interpret or make specific Sections 94874 and 94818 of said Code, the Bureau is considering changes to Division 7.5 of Title 5 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 94874 of the Education Code (Code) provides categories of institutions exempt from the California Private Postsecondary Education Act of 2009 (Code § 94800 et seq.). Specifically, subsection (a) exempts, “[a]n institution that offers solely avocational or recreational educational programs.” Section 94818 of the Code provides that “[a]vocational education’ means education offered for the purpose of personal entertainment, pleasure, or enjoyment.” Section 70000(k) of Title 5 of the California Code of Regulations provides a definition for “[e]ducation offered for purpose of personal entertainment, pleasure or enjoyment” and thus clarifies and makes specific the statutory definition of “avocational education.” The definition in section 70000(k) specifies that avocational education does *not* include education that assists a student to learn English as a second language, unless that education is for an “intensive English program that is touristic in nature, and provides for transportation, housing, and cultural and recreational activities.” The definition also specifies that avocational education does *not* include education that assists student to “enhance language skills for any business or occupational purpose.”

At the time the current regulations were promulgated, there was minimal federal oversight of Intensive English Language Programs (IELP). Therefore, to provide needed oversight of these programs, the regulations included IELPs within the Bureau’s jurisdiction. IELPs, however, are unlike traditional private postsecondary educational programs the Bureau

regulates. They do not offer diplomas or degrees, and they are more akin to exempt programs offered for personal entertainment, pleasure or enjoyment. Moreover, over the past several years, the federal government has provided substantial oversight of IELPs. Given the differences in these programs and the current level of federal oversight, the Bureau is proposing to amend the definition in 70000(k) so that if institutions solely offering IELP programs meet a specific set of requirements, they would be exempt from the Bureau's oversight.

Specifically, the regulatory proposal is as follows:

1. Re-number section 70000(k) to section 70000(k)(1) of Title 5 of the California Code of Regulations

This renumbers this subsection and places the existing paragraph introducing the meaning of “[e]ducation offered for purpose of personal entertainment, pleasure or enjoyment” under the number (1). It adds “the” between “for” and “purpose” to match the phrase in statute. It also adds “or is” for grammatical clarity. The introduction ends with the sentence, “It does not include education that in any manner does any of the following:”

2. Adopt section 70000(k)(1)(A) of Title 5 of the California Code of Regulations

This takes the language from the current section 70000(k)(3)(“Assists a student to prepare for a test administered in conjunction with any undergraduate or graduate educational program”) and moves it to this new subsection (A) and adds new language to make clear that education that assists students to prepare for any admission tests, including the TOEFL® (which is the brand name of a test of English as a foreign language), are not avocational. This subsection also exempts education that prepares students for tests for measuring English proficiency for the purposes of placing a student within an IELP.

3. Adopt section 70000(k)(1)(B) of Title 5 of the California Code of Regulations

With minor modifications, this takes the language from the current section 70000(k)(4)(“Is an educational service offered to lead to any employment in any occupation or job title”) and moves it to this new subsection (B).

4. Adopt section 70000(k)(1)(C) of Title 5 of the California Code of Regulations

This takes the language from the current section 70000(k)(5)(“Is represented to enable a student to use already existing knowledge, training, or skills in the pursuit of an occupation or to develop new or enhance existing knowledge, training, or skills in connection with any occupation or job title”) and moves it to this new subsection (C) with minor modifications.

5. Repeal section 70000(k)(1) of Title 5 of the California Code of Regulations

This deletes the current subsection 70000(k)(1).

6. Repeal section 70000(k)(2) of Title 5 of the California Code of Regulations

This deletes the current subsection 70000(k)(2).

7. Repeal section 70000(k)(2)(A) of Title 5 of the California Code of Regulations

This deletes the current subsection 70000(k)(2)(A).

8. Repeal section 70000(k)(2)(B) of Title 5 of the California Code of Regulations

This deletes the current subsection 70000(k)(2)(B).

9. Adopt section 70000(k)(2) of Title 5 of the California Code of Regulations

This subsection provides that institutions providing education to facilitate developing learning skills or language proficiency to assist in learning English as a second language will be considered “Education offered for the purpose of personal entertainment, pleasure or enjoyment” if it meets specific requirements.

10. Adopt section 70000(k)(2)(A) of Title 5 of the California Code of Regulations

This subsection requires the institutions identified in section 70000(k)(2) to be accredited by an accrediting agency recognized by the United States Department of Education.

11. Adopt section 70000(k)(2)(B) of Title 5 of the California Code of Regulations

This subsection requires the institutions identified in section 70000(k)(2) to maintain a minimum refund policy.

12. Adopt section 70000(k)(2)(C) of Title 5 of the California Code of Regulations

This subsection requires the institutions identified in section 70000(k)(2) to be certified by the Student and Exchange Visitor Program.

13. Adopt section 70000(k)(2)(D) of Title 5 of the California Code of Regulations

This subsection requires the institutions identified in section 70000(k)(2) to provide only specific types of exempt instruction.

14. Adopt section 70000(k)(2)(E) of Title 5 of the California Code of Regulations

This provides that the institutions identified in section 70000(k)(2) must not receive financial aid.

15. Adopt section 70000(k)(2)(F) of Title 5 of the California Code of Regulations

This provides that the institutions identified in section 70000(k)(2) must not provide financial aid.

16. Adopt section 70000(k)(2)(G) of Title 5 of the California Code of Regulations

This provides that the institutions identified in section 70000(k)(2) must not provide loans to students.

17. Adopt section 70000(k)(2)(H) of Title 5 of the California Code of Regulations

This provides that the institutions identified in section 70000(k)(2) must not facilitate or broker any loans for students.

18. Adopt section 70000(k)(2)(I) of Title 5 of the California Code of Regulations

This provides that no degree-granting programs are offered at the institutions identified in section 70000(k)(2).

19. Adopt section 70000(k)(2)(J) of Title 5 of the California Code of Regulations

This provides the institutions identified in section 70000(k)(2) do not promise or represent that courses lead to employment.

20. Adopt section 70000(k)(2)(K) of Title 5 of the California Code of Regulations

This provides that the institutions identified in section 70000(k)(2) cannot represent that they are approved by the Bureau.

21. Repeal section 70000(3) of Title 5 of the California Code of Regulations

This deletes this subsection.

22. Repeal section 70000(4) of Title 5 of the California Code of Regulations

This deletes this subsection.

23. Repeal section 70000(5) of Title 5 of the California Code of Regulations

This deletes this subsection.

Anticipated Benefits of the Proposal

IELPs are not generally considered traditional postsecondary educational programs. They generally do not offer degrees or diplomas, just certificates showing how much time has been completed in the immersive study. Their beginning and ending enrollment is generally based on how long a student wants to spend learning the language, not the program itself. In these ways, IELPs are more akin to educational programs offered for personal entertainment, pleasure or enjoyment. Moreover, when the regulations were originally created, federal oversight of IELPs was minimal. Today, the federal government has enacted numerous new regulations and oversight of these programs, and the Bureau's oversight is redundant. The Bureau has limited resources and it benefits everyone for the Bureau to use its resources where they can best serve the people of the State of California by no longer overseeing certain IELPs that meet the specific requirements set forth in the proposed regulations.

Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, the Bureau has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

There are no documents proposed to be incorporated by reference.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Cost/Savings in Federal Funding: The Bureau has determined that the costs of lost annual fees and other fees, such as renewal fees, will be offset by the savings from no longer

having to review reports and fact sheets from these institutions, conduct required compliance inspections, as well as other administrative requirements involved in the Bureau's oversight.

Specifically, the Bureau estimates that the proposed regulations would impact 11 known institutions by making them exempt. Based on the Bureau's most recent revenue data, these institutions paid approximately \$56,800 in annual institution fees and \$5,500 in renewal fees every five years. If these institutions opt to be recognized under the Bureau's exempt status, these institutions would be required to pay the Bureau \$250 every two years, which results in revenue of \$2,750 every two years. As a result, the Bureau anticipates a loss between \$54,000 to \$60,000 in annual institution and registration fee revenue per year.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 175000-17630 Require Reimbursement: None

Business Impact: This regulation will not have a significant adverse economic impact on businesses. The proposal would make a specific subset of institutions exempt from Bureau oversight. Thus, these institutions would no longer be required to submit annual reports, renewals, or produce student performance fact sheets thereby saving the particular institutions money.

Impacts on Jobs/New Businesses: None

Cost Impact on Representative Private Person or Business: The institutions that qualify for this exemption will save money which would have otherwise been required to pay fees and meet Bureau requirements.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations would affect small businesses to the extent that an institution that qualifies as both a small business and for the exemption. Such institutions will save money which it would otherwise have been required to pay for regulatory fees to the Bureau.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Bureau has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation:

IELPs will no longer be subject to oversight from the Bureau as long as they maintain the regulatory requirements for the exemption. This will save these institutions resources, including time and money, that have been required to be used to meet the various requirements set forth by the Act and division which comprise the laws overseeing private postsecondary education in California. Additionally, the Bureau will be able to use its resources to oversee other institutions, which is a benefit to the health and welfare of California residents by allowing the Bureau to focus its resources on traditional postsecondary institutions that grant diplomas and/or degrees and enroll tens of thousands of students annually, rather than programs designed for hundreds of international tourist/students, programs that are bought by the hour and not by completing a course of study.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of reasons for the proposed action and has available all information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau for Private Postsecondary Education, P.O. Box 980818, West Sacramento, CA 95798-0818.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You can obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

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Website Access <http://bppe.ca.gov>: Materials regarding this proposal can be found at <http://bppe.ca.gov/>.