

**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., Sacramento, CA 95834, at 10:00am, or as soon as practicable thereafter, on April 25, 2018. 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 no later than 5:00pm on April 23, 2018, 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 proposals substantially as described below or may modify such proposals 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 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 by Sections 94801.5 and 94877 of the Education Code, and to implement, interpret or make specific Sections 94801.5, 94850.5, 94930.5, 94923, 94924, 94909, and 94911 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

SB1192, Chapter 593, Statutes of 2016 (SB 1192), added the requirement that out-of-state private postsecondary institutions who enroll students residing in California must register with the Bureau and adhere to the statutory and regulatory requirements regarding the Student Tuition Recovery Fund (STRF). This rulemaking action provides the application form for registration, specifies the processes and procedures for applications, the appeal of denied applications, re-registration, and the STRF requirements for collection and submission of assessments to the Bureau, student disclosures, and required record keeping.

The effect of these regulations is to provide these schools with a uniform process to obtain registration with the Bureau, and to specify the STRF requirements that schools must meet for their California students so those students may obtain STRF relief if necessary.

Specifically, the regulatory proposal is as follows:

1. Adopt Article 3.5 of Chapter 2, Division 7.5 of Title 5 of the California Code of Regulations

This adoption would create a new article specific to the registration and re-registration of out-of-state institutions, entitled “Registration or Re-Registration of Out-of-State Institution.”

2. Adopt section 71396(a) of Division 7.5 of Title 5 of the California Code of Regulations

This adoption incorporates by reference the application for registration or re-registration.

3. Adopt section 71396(b) of Division 7.5 of Title 5 of the California Code of Regulations

This adoption provides that applications that do not provide all information required are deemed incomplete and ineligible for registration.

4. Adopt section 71396(c) of Division 7.5 of Title 5 of the California Code of Regulations

This adoption provides that institutions registering under this article must participate and meet specific requirements related to STRF, including collection and submission of STRF assessments, student disclosures, and record keeping.

5. Adopt section 71397(a) of Division 7.5 of Title 5 of the California Code of Regulations

This adoption provides that the Bureau will either grant or deny the application depending on whether the applicant has met the requirements of section 94801.5 of the Education Code.

6. Adopt section 71397(b) of Division 7.5 of Title 5 of the California Code of Regulations

This adoption provides for options that an institution has if an application is denied.

7. Adopt section 71397(c) of Division 7.5 of Title 5 of the California Code of Regulations

This adoption provides the applicant with the opportunity to have an informal conference with the Bureau Chief if the application is denied.

8. Adopt section 71397(d) of Division 7.5 of Title 5 of the California Code of Regulations

This adoption provides that an applicant may submit evidence prior to or at the informal conference to be considered along with all other relevant material.

9. Adopt section 71397(e) of Division 7.5 of Title 5 of the California Code of Regulations

This adoption provides that the denial will either be affirmed or reversed with 30 days after the informal conference, unless extended for good cause.

10. Adopt section 71398(a) of Division 7.5 of Title 5 of the California Code of Regulations

This adoption provides the exact time at which a registration expires unless re-registered, namely 12:00am on the day immediately following the last day of the term of registration.

11. Adopt section 71398 (b) of Division 7.5 of Title 5 of the California Code of Regulations

This adoption specifies that an institution is to re-register with the Bureau using the same form as for registration, and provide the same information, documentation, and fee.

12. Adopt section 71398(c) of Division 7.5 of Title 5 of the California Code of Regulations

This adoption provides that a re-registration submitted prior to the expiration of a current registration will be allowed to continue to operate while the new application is processed.

13. Adopt section 71398(d) of Division 7.5 of Title 5 of the California Code of Regulations

This adoption provides that an institution cannot re-register if it is not current with submission of STRF assessments.

14. Adopt section 71399(a) of Division 7.5 of Title 5 of the California Code of Regulations

This adoption provides that institutions must collect and submit STRF assessments per STRF regulations.

15. Adopt section 71399(b) of Division 7.5 of Title 5 of the California Code of Regulations

This adoption provides that prior to enrollment, a school catalog and enrollment agreement with the required STRF disclosures must be provided to a prospective student.

16. Adopt section 71399(c) of Division 7.5 of Title 5 of the California Code of Regulations

This adoption provides that the enrollment agreement shall indicate that the STRF assessment is non-refundable.

17. Adopt section 71399(d) of Division 7.5 of Title 5 of the California Code of Regulations

This adoption provides that prior to closing a program, an institution must provide information regarding the STRF and the Bureau to its California students.

Anticipated Benefits of the Proposal

The broad objective of the proposed rulemaking is to make the current regulations consistent with SB 1192's changes to the California Private Postsecondary Education Act of 2009 regarding out-of-state institution registration (Section 94801.5 of the Code), including providing an application form and procedures for the handling and processing of these forms and specifying the STRF regulations that these institutions are to follow.

The specific benefits anticipated from the regulation are that California residents attending these institutions via distance learning would become participants in the Student Tuition Recovery Fund (STRF) and would be eligible for reimbursement of economic loss under STRF based on the requirements set forth in the Act and regulations.

Consistency and Compatibility with Existing State Regulations

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

INCORPORATION BY REFERENCE

Application for Registration or Re-Registration of Out-of-State Institutions [Form Application 94801.5 (rev. 1/17)]

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Cost/Savings in Federal Funding: The Bureau anticipates additional registration and enforcement workload, as a result of the proposed regulations, including processing registrations and ensuring compliance with the Private Postsecondary Act. The Bureau estimates approximately 250 out-of-state institutions will register with the Bureau each year beginning in 2017-18. The Bureau anticipates additional revenues based on the required fee of \$1,500 to be submitted with the registration form, which must be renewed every two years. The Bureau estimates 250 institutions will register per year beginning in 2017-18 and annually thereafter, which results in annual revenue of \$375,000 per year, which will be deposited in the Bureau's Administration Fund.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 – 17630 Require Reimbursement: None

Business Impact: The Bureau made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impacts on Jobs/New Businesses: None

Cost Impact on Representative Private Person or Business: The Bureau is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulations.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Bureau determined that the proposed regulations would not affect small businesses. The proposed regulations relate to institutions that are not in the state of California but that provide distance education to students in California. The proposal makes no changes to institutions with a physical presence in California.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Bureau 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:

The Bureau has determined that this regulatory proposal will benefit the health and welfare of California residents by having the out-of-state institutions register with the Bureau. California residents participating in distance learning with these institutions will participate in and be eligible for the Student Tuition Recovery Fund (STRF), which mitigates economic loss of student under specific circumstances. These students will enjoy the same protection as students attending Bureau approved schools within the State of California. This will also bring the regulations into harmony with the new requirements set forth in SB 1192. The proposal will have no effect on worker safety or the state's environment.

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 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 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, any document incorporated by reference, 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.

AVAILABILTY 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 may 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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The backup contact person is:

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