

**TITLE 5. EDUCATION  
DIVISION 7.5. BUREAU OF PRIVATE POSTSECONDARY EDUCATION**

**FINAL STATEMENT OF REASONS**

**Hearing Date:** None.

**Subject Matter of Proposed Regulations:** Registration and Re-registration of Out-of-State Institutions

**Sections Affected:** Division 7.5 of Title 5 of the California Code of Regulations, amend sections 71396 and 71397

**Updated Information**

The Initial Statement of Reasons is included in the file. The information contained therein has not been modified.

An amendment to 5 CCR 71398 is being added to the text that deletes the revision date of the form being used from 1/17 to 8/22. This is a non-substantive change as it is only changing the identification of the form from the previous one to the new one being amended that is being renamed as Form Application 94801.5 (rev. 8/22). The Notice of Proposed Action should have provided enough information for stakeholders to anticipate this change as the form being revised is clearly labeled, "Application for Registration and Re-Registration of Out of State Institutions" and the title of 5 CCR section 71398 is "Re-Registration," which should have indicated that the form being amended was intended to be used in both section 71396 and section 71398.

"Application for Registration and Re-Registration of Out of State Institutions" has three non-substantive changes being made. In Section 9 Question 1 the word "defined" is being deleted and replaced by "specified" for greater clarity. In Section 9 Question 3 the reference to 34 CFR section 602.3(b) is being specified as the version as amended on September 2, 2020. In Section 9 Question 6 the reference to 34 CFR section 685.206 is being specified as the version as amended on September 23, 2019.

No public hearing was originally set for this proposal, and none was requested. Bureau staff noticed the proposed rulemaking with a 45-day comment period ending on Tuesday, December 27, 2022, by 5 p.m. The Bureau did not receive any comments during this time period.

No changes have been made in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

**Justification for Request for Effective Date Upon Filing**

The Bureau requests that, pursuant to Government Code section 11343.4, subdivision

(b)(3), this regulation become effective upon filing with the Secretary of State. This request is based on the following good cause.

This regulation is being adopted primarily to implement AB 1344 (Bauer-Kahan, Chapter 520, Statutes of 2019), which significantly revised California Education Code (CEC) section 94801.5 and became operative on July 1, 2022. The law made several fundamental changes to the Bureau's oversight of out-of-state institutions enrolling California students, including changing the term of the Bureau's approval of an out-of-state institution from two years to five years, adding significant reporting requirements for out-of-state institutions, and granting the Bureau discretion in making its decision to approve, conditionally approve, or deny an application from an out-of-state institution.

In addition, SB 1433 (Roth, Chapter 544, Statutes of 2022) which becomes effective on January 1, 2023, further amends CEC section 94801.5, to permit unaccredited schools that had previously been unable to register to now register with the Bureau. SB 1433 also amended other Education Code sections that impact institutions required to register pursuant to section 94801.5, underscoring the importance of implementing regulations for CEC section 94801.5 clearly and timely. Collectively, they represent a significant change in the Bureau's oversight of out-of-state institutions that enroll California students online.

Beginning January 1, 2023, the regulations implementing CEC section 94801.5 will be significantly out of date, with the law having changed twice since the currently operative regulations were promulgated. This will create unnecessary confusion among the unaccredited out-of-state schools that will be required to register for the first time as of January 1, 2023, but not have a mechanism for doing so. The Bureau has received several inquiries from out-of-state institutions asking when the new form will be available. Having the regulations become effective upon filing will shorten the time period in which the regulations are two steps behind the statute, thereby reducing industry confusion.

### **Local Mandate**

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

### **Small Business Impact**

The Bureau has determined this proposal will affect small businesses because small businesses must comply with this proposal. The extent of the impact on any individual small business is unknown at this time.

### **Anticipated Benefits of this Proposal**

The specific benefit anticipated from the regulation is to make it easier for out-of-state institutions to comply with the disclosure requirements adopted by AB 1344, which would give the Bureau greater knowledge of an out-of-state institution's regulatory history in other states, making the Bureau's compliance procedures more efficient and

effective.

### **Consideration of Alternatives**

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons or businesses and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

No reasonable alternative to the regulatory proposal would allow the Bureau to conduct background investigations on out-of-state institutions in a manner compliant with California law.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected.

- a. Not adopt the regulations. This alternative was rejected because it would conflict with California law, specifically CEC section 94801.5, which directs the Bureau to adopt regulations that would allow the Bureau to collect the information required to be reported by out-of-state educational institutions applying to enroll California residents in their programs.

### **Incorporation by Reference**

All forms incorporated by reference through this proposed rulemaking were available upon request from the Bureau and have been made available on the Bureau's website. Publication of the document incorporated by reference in the California Code of Regulations would have been cumbersome or otherwise impractical due to the presence of graphical and formatting elements on the form. The use of the Bureau's seal, the State Seal, text boxes, check boxes, bold text, and other elements would have made the publication of the form in a readable and visually accurate manner difficult and impractical.

### **Summary of Comments Received During the 45-day Notice Period**

The Bureau received one comment during the comment period, from EduCred Services, which proposed delaying implementation of the regulatory changes until September 2024. The Bureau rejected the proposed change because the effective date of the regulation has already been delayed, and with the renewal period being changed from every two years to every 5 years the Bureau will be able to process the new applications without any delay..