

**BUREAU FOR PRIVATE POSTSECONDARY EDUCATION  
DEPARTMENT OF CONSUMER AFFAIRS  
Title 5, California Code of Regulations  
Division 7.5. Private Postsecondary Education  
Chapter 2. Applications  
Article 3.5. Registration or Re-registration of Out-of-State Institutions**

**INITIAL STATEMENT OF REASONS**

**REGISTRATION AND RE-REGISTRATION OF OUT-OF-STATE INSTITUTIONS**

**Hearing Date:** No hearing has been scheduled for this proposed action.

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

**Section affected: Sections 71396 and 71397,** Division 7.5 of Title 5 of the California Code of Regulations: Amend section 71396 and form incorporated by reference, amend section 71397.

**Specific purpose of each adoption, amendment, or repeal:**

**I. Background / Problem Being 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, §§ 94800–94950). As part of the regulatory review and oversight, California Education Code (CEC) 94801.5 was added to the Act by SB 1192 (Hill, Chapter 593, Statutes of 2016), approved by Governor Brown and filed with the Secretary of State on September 24, 2016, which made it mandatory for out-of-state private postsecondary institutions enrolling California residents in distance education programs to register with the Bureau effective July 1, 2017. Institutions that do not register with the Bureau are not allowed to operate in California. These institutions must qualify for registration by providing specific information to the Bureau. The provisions of SB 1192 made registration by an out-of-state institution valid for two years. The Bureau subsequently implemented SB 1192 by adopting section 71396 of Title 5 of the California Code of Regulations (5 CCR), which incorporated by reference the Bureau’s Application for Registration or Re-registration of Out-of-State Institution [Form Application 94801.5 (rev. 1/17)].

In 2019 Governor Newsom signed AB 1344 (Bauer-Kahan, Chapter 520, Statutes of 2019) which, among other things, changed the application renewal period from two years to five years and added four pieces of information to be submitted by out-of-state institutions when filling out the Application for Registration or Re-registration of Out-of-State Institutions. CEC section 94801.5(a)(1) was amended to require out-of-state institutions to include the following information and documentation:

- 1) Whether or not the institution, or a predecessor institution under substantially the same control or ownership, had its authorization or approval revoked or suspended by a state or by the federal government, or, within five years before submission of the registration, was subject to an enforcement action by a state or by the federal government that resulted in the imposition of limits on enrollment or student aid, or is subject to such an action that is not final and that was ongoing at the time of submission of the registration.
- 2) Whether or not the institution, or a controlling officer of, or a controlling interest or controlling investor in, the institution or in the parent entity of the institution, had been subject to any education, consumer protection, unfair business practice, fraud, or related enforcement action by a state or federal agency within five years prior to submitting the registration. If so, the institution shall provide the bureau a copy of the operative complaint with the registration.
- 3) Whether or not the institution is currently on probation, show cause, or subject to other adverse action, or the equivalent thereof, by its accreditor or has had its accreditation revoked or suspended within the five years prior to submitting the registration.
- 4) Whether or not the institution, within five years prior to submitting the registration, has settled, or been adjudged to have liability for, a civil complaint alleging the institution's failure to provide educational services, including a complaint alleging a violation of Title IX of the federal Education Amendments of 1972 (Public Law 92-318) or a similar state law, or a complaint alleging a violation of a law concerning consumer protection, unfair business practice, or fraud, filed by a student or former student, an employee or former employee, or a public official, for more than two hundred fifty thousand dollars (\$250,000). The institution shall provide the bureau a copy of the complaint filed by the plaintiff and a copy of the judgment or settlement agreement for any such judgment or settlement, and the bureau shall consider, pursuant to paragraph (2), all material terms and aspects of the settlement, including, for example, whether a student plaintiff remained enrolled or reenrolled at the institution.

The statute also authorized the Bureau to require “[a]ny additional documentation the bureau deems necessary for consideration in the registration process.”

The bill directed the Bureau to adopt emergency regulations to implement the law on and after July 1, 2021; however, the statute itself was given an operational date of July 1, 2022, a year after the emergency regulations were to begin. When asked for its opinion, the Office of Administrative Law determined the Bureau could not initiate emergency rulemaking before the statute became operative as no emergency existed until then. The Bureau made the decision to proceed with regular rulemaking with the goal of having them in place as soon as possible after the operative date of July 1, 2022.

The proposed regulatory action will amend the Application for Registration or Re-registration of Out-of-State Institutions form, which is incorporated by reference in 5 CCR section 71396, to implement AB 1344 by adding the new reporting requirements to the form, which will both inform institutions of the new requirements and also provide a space for institutions to submit the necessary information and documentation to the Bureau. The additions include the four provisions specifically laid out in AB 1344, as well as several other provisions that were added after consultation with the Bureau's Advisory Committee.

The proposed regulatory action will also update the design of the header and contact information listed on the form for contacting the Bureau. The privacy notice at the bottom of the form lists the Bureau's phone number as (916) 431-6959, but it has since been changed to (916) 574-8900. The number is updated to make it easier for institutions to contact the Bureau if they have any issue with filing out the form.

AB 1344 (Chapter 520, Statutes of 2019) provided in 94801.5(a)(2)(A) guidelines for the Bureau to follow, "[w]hen considering whether to approve, deny, or condition initial registration based upon the information provided by an institution pursuant to paragraph (1) . . . but, exercising its reasonable discretion, approve, reject, or condition registration based upon a review of all of the information provided to it under paragraph (1)."

Before the passage of AB 1344, the Bureau had no discretion in deciding whether to approve or deny an out-of-state application; institutions could only be denied if they failed to provide the required documentation or filled out the form incorrectly. CEC 94801.5 as amended now grants the Bureau the ability to evaluate the information submitted by an out-of-state institution and exercise discretion when deciding whether to approve or deny the application. In order to exercise this ability in a fair and transparent manner, the Bureau is amending 5 CCR 71397 to set forth principles it will exercise when considering an application.

The Bureau is proposing to amend 5 CCR 71397 to define how the determination whether to approve, conditionally approve, or deny an application will be made, as evaluated by the application of evaluation criteria. These amendments follow the requirements of CEC 94801.5 and allow the applicant to utilize the appeal process that already exists under 5 CCR 71397.

In order for the regulations to conform to the revised statutory language, the Bureau for Private Postsecondary Education is proposing to amend 5 CCR section 71397 to add provisions to clarify the basis for the decision concerning an Out-of-State application, and specify the reason for the decision so the applicant can decide whether to avail itself of the appeal process.

## II. Anticipated Benefits from Regulatory Action

The proposal would make it easier for out-of-state institutions registering with the Bureau to be aware of their legal requirements by informing them clearly what information the Education Code requires them to submit during the registration process. It would also make it easier for the Bureau to evaluate Application for Registration or Re-registration of Out-of-State Institutions applications by including all of the necessary details in the one form. Ultimately, this regulatory action will benefit California students by allowing the Bureau access to additional information about out-of-state institutions wishing to enroll California students, by giving the Bureau access to recent information about how the institution operates in other states and whether it has been subject to discipline by any state, the federal government, or its accreditor. This information will assist the bureau in its oversight over the institution and would ensure that all higher education students in California have the same protections, regardless of whether they enroll at a school physically located within California or not, and would require any institution that enrolls a student residing in California to comply with all state requirements.

The decision by the Legislature to allow the Bureau to exercise discretion in making its decision to approve, approve with conditions, or deny applications to operate from out-of-state institutions requires the Bureau to alter the process it uses in making that decision. Whereas before the Bureau was bound to approve any application from an out-of-state institution that was filled out correctly, now the Bureau has the opportunity to weigh evidence and make judgements based on its discretion.

The proposed regulatory changes to section 71397 specify what criteria shall be used to evaluate the information submitted on the application. Such considerations will assure that the Bureau exercises its discretion in a rational basis and provide applicants with a basis for review if they disagree with the Bureau's conclusions.

## III. Specific Purpose and Necessity for Each Regulatory Adoption

1. Amend 5 CCR section 71396 to update the reference date on the Application for Registration or Re-registration of Out-of-State Institutions form from "rev. 1/17" to "rev. 08/22" and to re-order the statutes cited in "References" to be in ascending numerical order.

**Specific Purpose:** The Bureau proposes amending 5 CCR section 71396 to change the revision date of the Application for Registration or Re-registration of Out-of-State Institutions form that is incorporated by reference in the regulation. By incorporating the updated form by reference, the Bureau assures that out-of-state institutions submitting the form are using the one that includes the latest legislative changes to CEC section 94801.5.

Currently, the statutes cited under "References" have section 94930.5 followed by 94923 and 94924, which are followed by 94909(a)(14) and 94911(b). The proposal puts

the statutory references under “References” in ascending numerical order, which should make the references less confusing.

**Necessity:** The existing regulation incorporates by reference a version of the Registration or Re-registration of Out-of-State Institutions form that does not include the information required to be submitted under the amended version of CEC section 94801.5. Amending 71396 to refer to the updated revised version is the only way to assure that institutions know they are filling out the latest and most legally complete version of the form. Putting the referenced statutes in ascending numerical order makes it easier to do research on the statutory basis of the regulation.

2. Amend the Application for Registration or Re-registration of Out-of-State Institutions form by updating the header with revised information on the Bureau’s contact information, the agency the Bureau is under, and the Governor’s name, and also add the California state seal.

**Specific Purpose:** Using updated software allows the Bureau to enhance the appearance of the form by placing the Bureau’s standard header at the top of the document. This provides applicants with more information about the Bureau, how to contact the Bureau, and what state agency the Bureau operates under. Use of the standard header follows Department protocol in using this header on official Department documents.

The revised header updates the identity of the current Governor to Gavin Newsom, identifies the entity responsible for the form as the Business, Consumer Services and Housing Agency, the Department of Consumer Affairs, and the Bureau for Private Postsecondary Education. The header has the Bureau’s new main phone number, toll free number, and website URL.

**Necessity:** Revising the information provided to applicants at the top of the form provides a consistent format for all Bureau applications. It also provides applicants with greater information about the Bureau and its role in state government, and gives applicants more options if they wish to contact the Bureau with a question.

3. Amend the Application for Registration or Re-registration of Out-of-State Institutions form by moving the “Office Use Only” box from the upper right-hand corner to the bottom of page 1, and add the word “Received” after “Application Fee.”

**Specific Purpose:** Updated software for designing forms allows the Bureau to have greater flexibility in crafting the appearance of its forms. Moving the Office Use Only box from the top of the first page to the bottom of the first page will make it easier to access if a number of applications are bound together at the top. Adding the word “Received” clarifies that the amount entered should denote the amount of money received by the Bureau, not state what the statutory application fee is.

**Necessity:** Moving the Office Use Only box to the bottom of the first page allows the Bureau to use its standard header for forms. Placing the box at the bottom of the first page also makes it easier for Bureau administrative personnel to access the box while processing the form, as the forms may be bound together at the top. Clarifying the space for “Application Fee Received” will let applicants know how much the Bureau received as their payment in case there is a discrepancy between the amount received and the amount owed.

4. Amend the Application for Registration or Re-registration of Out-of-State Institutions form opening section by changing the reference to CEC section 94801.5(b) to 94801.5(c), adding the word “application” after the words, “Each registration and re-registration” of the next to last sentence in the opening paragraph, and inserting the word “nonrefundable” before the words “fee of \$1,500”. Delete the words “and is valid for two years” after “\$1,500”. Add, “An approved registration is valid for five years.” Add the sentence, “An approved registration is valid for five years.” Change the statutory citation of CEC section 94801.5(d) to section 94801.5(e).

**Specific Purpose:** Adding the word “application” is designed to clarify that the fee is for submitting the application and not for registration and is due when the application is submitted and not upon being registered. What was previously one sentence is being revised into two sentences to avoid confusion and emphasize that it is the application, not the registration, that has the \$1,500 fee, and that the registration, not the application, is good for five years. Changing the term of the application from two years to five years informs applicants that the term of the registration was extended by AB 1344 (Bauer-Kahan, Chapter 520, Statutes of 2019). Re-numbering the cited statute from section 94801.5(b) to section 94801.5(c), and 94801.5(d) to section 94801.5(e), is to provide the correct statute citation as AB 1344 re-numbered the subsections under section 94801.5 and now it is sub-section (c) that provides an exemption from registration, and sub-section (e) that establishes the length of validity for an approved Out-of-State registration application.

**Necessity:** The addition of the word “application” to the sentence explaining what the registration fee is and for how long the registration is valid is needed to make it clear that it is the act of submitting an application that triggers the fee of \$1,500.00 and not the act of registering after the application is approved. Adding a sentence that states that the term of the registration, and not the application, is five years eliminates confusion as well. Changing the description of the length of the validity of the registration from two years to five years is required to accurately state the change that was enacted in AB 1344, which made that change in CEC section 94801.5(e). Renumbering the code section cited for the application fee and the term of the registration is necessary because AB 1344 revised the statute, and the term of the registration was moved from subsection (d) to subsection (e).

5. Amend the introduction of the Application for Registration or Re-registration of Out-of-State Institutions form by adding “be eligible to” between the words “To” and “register” and adding “for” between “or” and “re-registration” in the parenthetical comment. Delete the word “following” and add “\$1,500 fee and any applicable documentation identified below” before “must be included”. Add “any applicable documentation identified below” after the deleted “following.” Replace the colon after “application” with a period. Delete the following language:
  - “1. Verification that the institution is accredited by an accrediting agency recognized by the United States Department of Education.
  2. Verification that that the institution is approved to operate in the state where it maintains its main administrative location.
  3. A copy of the institution’s (a) catalog and (b) enrollment agreement for its California students, including the required Student Tuition Recovery Fund disclosures.
  4. A \$1,500.00 non-refundable registration fee.”

Add a space for the applicant to fill in the previous registration number if this is a re-registration application.

**Specific Purpose:** In order to emphasize that the Bureau now has discretion in processing Out-of-State Registration applications, the Bureau is changing the sentence after the first paragraph to begin “To be eligible to register” instead of “To register” as on the current form. Before the passage of AB 1344, an institution could register merely by submitting a completed application, but now an institution that meets the minimum standards of eligibility could be denied registration if the Bureau chooses to use its discretion. Therefore, institutions are being told that they are not registering merely by submitting the application.

The word “for” is being added to the parenthetical segment in this section to be more grammatically correct after the addition of “be eligible” described above. Prior to AB 1344 the sentence read, “To register, (or re-register . . .)” but with the addition of the words, “be eligible” there needs to be a verb to make the sentences consistent (“To be eligible to register (or for re-registration. . .”).

The phrase, “\$1,500 fee and” is being added before, “any applicable documentation identified before to remind applicants that a complete submission must include the fee that is due upon submission of the application, and not upon being registered.

The phrase “any applicable documentation identified below” is being added to instruct the applicant that eligibility requires the application to contain any additional documentation that may be required by any of the sections of the form. This instruction serves a similar purpose to the former four item list of required items being deleted in this rulemaking. The open-ended format is necessary because, considering the questions on the form, the number of documents to be submitted is indeterminate.

AB 1344 directed the Bureau to add several new questions to the Out-Of-State Registration form and authorized the Bureau to add others if the Bureau deemed them necessary to the process of evaluating applications from Out-of-State schools. As a

result, the number of documents required to be included with the application is increasing significantly and may vary if the applicant does not need to submit certain documents. Therefore, the Bureau is eliminating the list of documents required to be attached to the registration form and replacing it with a statement that all documents required to be submitted with the registration form must be included.

Adding space for the previous registration number of any institution applying for re-registration corrects an omission in the present form, as having the prior registration number for re-registrants is necessary when evaluating their application.

**Necessity:** Institutions need to be aware of the fact that they no longer can register to operate in California merely by submitting an application, but that institution may be eligible to operate in California but still have their application denied. It is necessary to make the sentences in the application conform to normal grammatical rules, and adding the modifier “be eligible to” in the sentence requires that the subsequent parenthetical phrase be modified to have the same grammatical structure. It is important to remind schools filling out the application that the statutorily required fee is due upon submission of the application and not upon being registered.

AB 1344 dictates the Bureau ask for additional information from schools that are registering or re-registering to operate in California as an Out-of-State school, and the Bureau has decided to ask for additional information as authorized by AB 1344 (the necessity of the new information is explained below). It is clearer for institutions filling out the Out-of-State Registration form if the itemized list of documents to be attached to the form is eliminated and replaced by a statement that all documents required to be attached must be attached.

Having a school that is re-registering submit the registration number it was previously approved under would help the Bureau access the school’s files while processing the re-registration form, particularly if there have been any changes to the school’s name or other identifying information. Changes are more likely now that registration is being done every five years instead of every two years.

6. Amend the application form to add “section” before the section number for existing sections 1 through 7, and replace the period after the section number with an en dash (“ – ”)

**Specific Purpose:** The word “Section” is being added before the section number of each existing section for clarity and to be consistent with the format of the rest of the document. The change of the period after the number to an en dash (“ – ”) is for visual consistency across each section. The en dash points to the title of each section, improving readability.

**Necessity:** Designating each part of the form as “Section” instead of by just a number clarifies to the applicant that the form is comprised of various components that need to be filled out. Referring to, for example, this component as “Section 1” rather than just “1” makes it clearer that the number identifies which section it is, and not some other

numerical purpose. As noted above, the addition of the en dash improves readability by pointing the reader to the title of each section.

7. Amend the second section of the application form to replace the lower-case words “for this application” in parentheses with “For This Application” in all upper case.

**Specific Purpose:** The words in the title are being put all in caps and superfluous parentheses are being eliminated to be consistent with other section titles.

**Necessity:** The title of the section is being standardized and clarified to avoid any confusion.

8. Amend the third section of the Application for Registration or Re-registration of Out-of-State Institutions form by adding a space for “Email address (optional)” in the information provided.

**Specific Purpose:** Section 3 of the Application for Registration or Re-registration of Out-of-State Institutions asks the institution to designate an agent for service of process in California. Adding an email address to the information being asked for will make it easier for the Bureau to contact the agent for service if necessary. The request for an email address is being listed as “optional” as Education Code section 94943.5, which establishes the requirements for an agent for service of process, does not require the submission of an email address.

**Necessity:** One important aspect of an out-of-state business operating in California is that there be an agent for service of process so the business can be subject to California legal proceedings. Given the importance of having an agent for service for an institution located outside of the state’s boundaries, the Bureau needs confirmation of the agent for service’s legal status, and the methods by which he or she may be contacted. Providing a space for the optional submission of an email address allows the institution to provide a convenient method of contact that is not required by the Education Code.

9. Amend Section 4 to delete the word “sheets” and replace it with “pages” and revise the definition of affiliate to add, “means your school or program has a formal collaborative agreement with an approved school or program where your school or program agrees to utilize the policies, curriculum, facilities, employees or equipment of the other school or program, or it” before the existing “is an entity that is related to the out-of-state institution by financial interests or other means of control”. Add, “, including the same ownership or management (by the same individual(s) or business entity” after “means of control”.

**Specific Purpose:** Text of the section is replacing “sheets” with “pages” because the word “sheets” has multiple meanings, while “pages” more clearly specifies sheets of paper.

Section 4 of the application asks out-of-state-institutions for information about any institutions in California they are affiliated with, if any. The current form offers a definition of affiliate that is, “An affiliate is an entity that is related to the out-of-state institution by financial interests or other means of control.” This definition has proven to be confusing to some applicants, especially given the complex financial relationships that can exist under current corporate law. The Bureau is attempting to explain the term “affiliate” with more precision. This added words in the definition are taken from the definition in the Application for Approval of New School or Program of Vocational Nursing that was approved by the Office of Administrative Law.

**Necessity:** In evaluating the application of an out-of-state school to operate in California, it is important to know if the ownership of the school has any existing ties to California. Complex corporate organizations may make the connections between schools obscure. Therefore, the Out-of-State Registration application form asks applicants to identify any affiliate that exists in California.

However, the term “affiliate” is a term that can be interpreted in many ways, and someone filling out the Out-of-State Application Registration application might leave out affiliates without intending to do so because the term is subject to interpretation. The new definition attempts to provide applicant with more direction as to what should be included.

10. Amend the Application for Registration or Re-registration of Out-of-State Institutions form by adding a sentence before Section 5 that says, “Complete sections 5 through 9 as applicable.”

**Specific Purpose:** The intent of implementing CEC section 94801.5 was to permit all out-of-state institution to register with the Bureau, but it has come to the Bureau’s attention that the application language is discouraging unaccredited out-of-state institutions from registering. The form directs the applicant to fill out all sections of the form, but unaccredited institutions cannot respond to the instruction, “Attached is verification of accreditation granted by the institution’s accrediting agency that is recognized by the United States Department of Education.”

To clarify that unaccredited institution may use the Application for Registration or Re-registration of Out-of-State Institutions form, the Bureau is adding a sentence that directs applicants to “Complete sections 5 through 9 as applicable.” This will alert unaccredited institutions that they may submit an application by attaching a document that says, “Not applicable” in response to the direction in Section 5.

The Bureau is undertaking this change under our general authority to implement CEC section 94801.5. We will have express statutory authority to make this change after January 1, 2023, as SB 1433 (Roth, Chapter 544, Statutes of 2022) amends the text of

CEC section 94801.5(a)(1) to add the words, “as applicable”, so the statute will read, “The institution shall provide the bureau with all of the following information, as applicable, for consideration of initial registration by the bureau pursuant to paragraph (2).”

**Necessity:** It is necessary to add an instruction that informs non-accredited schools that they may fill out and submit an application for registration as an out-of-state institution. Without adding this language, non-accredited institutions will be directed to submit their accreditation information and will believe they are not able to submit the form. This clarification is needed to correct that impression by instructing non-accredited schools to respond “not applicable” to the question about their accreditation information.

11. Amend section 5 of the application form deleting the checkbox after the text and adding “Document is attached: \_\_\_\_\_(initial)”

**Specific Purpose:** The Bureau is deleting the check box currently used to replace it with an initialed attestation that the requested document has been attached. This permits the Bureau to hold the institution responsible if a document that has been attested to be attached is not submitted with the application.

**Necessity:** Having a statement that a document is attached that must be initialed is more efficient than the previous use of a check box, as attesting that the document is attached means that the statement in Section 10 that the “representations made on this form and any accompanying attachments are true, complete, and accurate to the best of my knowledge” apply to whether the document is attached. A simple check mark may not be perceived to be a “representation.” This prevents an institution from delaying review of the application by neglecting to attach forms that it says are attached.

12. Amend the sixth section of the application by deleting the checkbox after the text and adding “Document is attached: \_\_\_\_\_(initial)”

**Specific Purpose:** The Bureau is deleting the check box that is currently used to replace it with an initialed attestation that the requested document has been attached. This permits the Bureau to hold the institution responsible if a document that has been attested to be attached is not submitted with the application.

**Necessity:** Having a statement that a document is attached that must be initialed is more efficient than the previous use of a check box, as attesting that the document is attached means that the statement in Section 10 that the “representations made on this form and any accompanying attachments are true, complete, and accurate to the best of my knowledge” apply to whether the document is attached. A simple check mark may not be perceived to be a “representation.” This prevents an institution from delaying review of the application by neglecting to attach forms that it says are attached.

13. Amend the Application for Registration or Re-registration of Out-of-State Institutions form by creating a new part called Section 7, giving it the title “FINANCIAL RESPONSIBILITY” and directing the applicant to do the following: “(a) If applicable, for institutions participating in federal student financial aid programs under Title IV of the Higher Education Act (20 U.S. and 1070 et seq.) (“participating institutions”), attach the institution’s Financial Responsibility Composite Scores as described and calculated in Title 34, Code of Federal Regulations (C.F.R.) sections 668.171 and 668.172 for the past five years, as determined by the U.S. Department of Education.” Followed by “Documents are attached: \_\_\_\_\_ (initial).”

Add, “(b) If applicable, for participating institutions, was the institution placed on Heightened Cash Monitoring as described in 34 C.F.R. section 668.162?” followed by a check box and “Yes (statement attached)” and a check box and “No” followed by a space and “(initial)” Add If “yes”, provide the dates that the institution was placed on Heightened Cash Monitoring and specify if it was Level 1 or Level 2 in a statement attached to this application.”

**Specific Purpose:** As noted above, California CEC section 94801.5(a)(1)(I) now authorizes the Bureau to ask institutions to include any “additional documentation the bureau deems necessary for consideration in the registration process.” The Bureau has determined that one aspect of an out-of-state institution that should be documented before permitting the institution to operate in California is the school’s financial soundness. An institution that is financially unsound poses a greater risk of closing, which would have a negative impact on students and trigger expenditures for the Student Tuition Recovery Fund (STRF).

One way to gauge an institution’s fiscal soundness without accessing the institution’s financial accounts is by examining their Financial Responsibility Composite Scores as determined by the U.S. Department of Education. Section 498(c) of the Higher Education Act of 1965 requires both for-profit and non-profit schools to submit audited financial statements to the Department of Education to demonstrate they have the level of financial responsibility to be allowed to participate in Title IV financial aid programs. The Department of Education uses this information to calculate three ratios (primary reserve ratio, equity ratio, and net income ratio) and these are used to create a Financial Responsibility Composite Score that ranges from negative one to three; a score greater or equal to 1.5 is considered financially acceptable. Knowing an institution’s Financial Responsibility Composite Scores from the previous five years will provide the Bureau insight into the institution’s financial soundness. This provision begins with the words, “If applicable” to indicate that schools that do not participate in Title IV Financial Aid programs do not need to submit anything as this provision does not apply to them.

Schools whose financial information raises red flags with the U.S. Department of Education may be put on what is called Heightened Cash Monitoring (HCM). Putting a school on HCM allows the Department to exercise additional oversight over the school’s cash management. There are two levels of HCM; under the most severe, instead of the

Department of Education dispersing student aid funds to the school for disbursement to students as usual, the school must make disbursements to students for financial aid from its institutional funds and then submit a Reimbursement Payment Request to be reimbursed by the Department of Education. Knowing a school was under HCM within the past five years would give the Bureau significant insight into the institution's financial viability.

The line asking that documents be submitted to be consistent with other sections of the form, and to give the applicant a chance to indicate that it complied with the requirements of this section.

**Necessity:** Schools located in another state that apply for the opportunity to operate in California will be less well known than schools located in the state. Schools that are financially mismanaged can continue to operate for years before they are forced to close, imposing costs on its students and the STRF fund. Nothing in the current Out-of-State Registration form would provide the Bureau any insight into a school's financial responsibility. The approval form completed by in-state schools who are unaccredited, Form 94886, is required by regulation 5 CCR section 71240 to contain a statement from the applicant that the school can meet the financial responsibility standard established in 5 CCR section 71745, which lists detailed documentation of a school's financial resources. In order to evaluate out-of-state schools prior to providing them a five-year term of approval, the Bureau must have information on the school's finances.

However, having schools submit detailed financial records would make the applications difficult to both submit and evaluate. A simpler method is to ask the school to submit a Financial Responsibility Composite Score as determined by the U.S. Department of Education, which makes use of the Department of Education reducing copious financial documents down to a simple score that ranges from negative 1.0 to 3.0. Asking schools if they have been placed on Heightened Cash Monitoring within the past five years alerts the Bureau if an out-of-state institution has had recent financial difficulty that might make it difficult for them to maintain operations to service California students.

The application asks applicable institutions to attach documents supporting their responses in Section 7, and that if a document is attached the form be initialed to indicate that. This allows the Bureau to confirm the institution's response and intent to attach the document.

Part (b) asks the applicant to submit a statement explaining a response of "Yes" to the question of whether the institution was placed on Heightened Cash Monitoring. If an institution answers, "yes" to having been placed on Heightened Cash Monitoring by the U.S. Department of Education, the Bureau needs to know how long ago in the past it took place and whether the institution was placed on Level 1 or the more serious Level 2. The recency of an institution's placement on Heightened Cash Monitoring is an indicator of financial responsibility; the more recent the action, the higher the concern. The same rationale applies to the question of whether the monitoring is level 2 or level 1. Level 2 monitoring indicates a more serious issue the Bureau can use to evaluate responsibility.

14. Amend the Application for Registration or Re-registration of Out-of-State Institutions form section 7 to renumber the section refer to it as “Section 8,” and change the name of the section from “Catalog and Enrollment Agreement” to “CATALOG AND ENROLLMENT AGREEMENT (STRF Student Disclosures).” Change the first statement to delete “are copies” and replace it with “is a copy”. And add “or other documentation” after “California students” and add “student” after (STRF). The check box for “Catalog” adds “attached \_\_\_\_\_ (initial).” The check box for “Enrollment agreement” is deleted.

The following text is added, “For institutions that use enrollment agreements, attached is a copy of an enrollment agreement for California students showing the required STRF student disclosures as referenced in title 5, California Code of regulations (CCR) section 71396(c). Enrollment Agreement attached: \_\_\_\_\_(initial)” followed by “For institutions that do not use enrollment agreements, attached are documents showing how the required STRF disclosures made to California students. Documents attached: \_\_\_\_\_(initial). Attached are copies of the STRF records required to be kept by 5 CCR 76140 for each student for the past five years. If this is a new application, please attach a copy of a spreadsheet formatted to collect the information required by CCR section 76140. Documents are attached: \_\_\_\_\_ (initial).”

**Specific Purpose:** Section 7 is being renumbered Section 8 to be consistent with the addition of the new section before it. The section is being called Section 8 for clarity and to be consistent with the format of the rest of the document.

The section is being renamed to focus on how the out-of-state institution will inform California students of the required STRF notifications. While the section asks for submission of a catalog, it also asks for either an enrollment agreement if it contains the STRF notification, or if there is no enrollment agreement, then whatever documents are used to inform students of the STRF notifications, and copies of the records required to be kept under STRF in 5 CCR section 76140.

The Bureau is changing the beginning of the sentence from “Attached are copies . . .” to “Attached is a copy . . .” to be clearer that the Bureau is requesting a single copy of each of the documents requested, not multiple copies of each. The format is being restructured and now asks for “or other documentation” than a catalog and/or an enrollment agreement, as STRF disclosures are sometimes made by other means and the Bureau wants to have all applicable documents. The check box and request for “Enrollment agreement” are being deleted and replaced by the request for an enrollment agreement below.

As STRF is a law that out-of-state schools might be unfamiliar with, it is necessary to make sure that all schools enrolling California students inform those students of the Student Tuition Recovery Fund and their rights under STRF. When the Out-of-State Registration form was first developed, it was assumed that all schools had enrollment agreements with their students, and that those enrollment agreements were the method that would be used to inform students of the rights under STRF. However, experience

has shown that there are schools that do not have enrollment agreements with their students, and that these schools use alternate methods of informing California students about STRF. The revised format of the requirements to submit documents in Section 7 makes it clearer that it is important for the Bureau to know that the institution makes the necessary STRF notifications to California students.

The revised form keeps the check box next to the word, “Catalog” but adds “attached \_\_\_\_\_(initial)”. The form still requires a catalog to be submitted, but now is clearer by using the format of having an explicit statement that the document is attached, and asking for an individual to attest to the attachment by initialing the application.

The form replaces the previous request that an enrollment agreement be attached with a check box next to “Enrollment agreement” with language that explains that what the Bureau wants to be attached is a copy of the enrollment agreement (if the institution uses enrollment agreements) with the STRF student disclosures included.

The form next asks institutions that do not use enrollment agreements to attach whatever documents they use to make the required STRF disclosures to students. This is to assure the Bureau that the disclosures are being communicated to students even if not in an enrollment agreement, as institutions operating outside of California may not be required to have an enrollment agreement.

Next, the form asks for copies of STRF records required to be kept collected and kept under 5 CCR section 76140, or if this is a new application, a spreadsheet formatted to collect the required information. The purpose is to make sure that the institution that is applying is keeping the necessary record, or if it is a new application, the institution is aware of the STRF record requirements and is prepared to collect and keep the information in the proper format.

While the catalog, enrollment agreements, and STRF records must be reported in the annual report, it is important for the Bureau to have these record for the past five years of the institution’s operation in order to evaluate their qualifications to operate for the five years after they are approved to operate in California. If this is a new application, the institution must provide a spreadsheet formatted to collect the data that will be required to be reported by CCR section 76140.

**Necessity:** The new language in what is now Section 8 is needed to explicitly direct applicants that the Bureau requires the submission of the documents they use to communicate STRF disclosures to students. The changes to this section are necessary to make it clear to applicants what documents the Bureau is requiring to be submitted. The Bureau needs one copy of each document, and to make this clear the request for the copies to be attached is changed from “Attached are copies . . .” to “Attached is a copy. . .”

The Bureau needs to ask for all documents that might be used for disclosures to students and so is now asking for any “other documentation.” The Bureau needs all these documents to make sure the applicant is aware of the state requirements for STRF and is capable of complying with them.

Institutions are required to make disclosures to California students about their rights under the laws surrounding STRF in both their catalog and in any enrollment agreement under 5 CCR section 76215. In order to ascertain that the required disclosures will be made, and are visible to students in the school catalog and in their enrollment agreement (if the school uses enrollment agreements), the Bureau needs to inspect both the school's catalog and its enrollment agreement, or inspect the document it uses in lieu of an enrollment agreement.

The word "student" is being added after "(STRF)" in what is now Section 8 to conform the description of the disclosures to the way it is used in 5 CCR section 71396(c), which refers to "student disclosures". This will avoid confusion in determining which disclosures are meant.

After the check box and the word "Catalog," the application now asks institutions to attach the catalog, and that if a catalog is attached the form be initialed to indicate that. This allows the Bureau to confirm the institution's response and intent to attach the document. It is necessary to delete the check box and the words "Enrollment agreement" as the request for an enrollment agreement is now below.

If the institution uses enrollment agreements, the form now asks for a copy of an enrollment agreement containing the disclosures, and again asks for initials to attest to the attachment. This part of the application ensures compliance with 5 CCR section 71396(c) regarding student disclosures. If the institution does not use enrollment agreements, then the form requests any other documentation that the institution uses to make the disclosures, again with initials to attest to the attachment. Similar to above explanations, inclusion of other documentation demonstrates to the Bureau the institution is effectively notifying students of the student disclosures.

Finally, the form directs the institution to attach copies of their existing STRF records for each student for the past five years, or if they are a new applicant, a correctly formatted spreadsheet for the data.

Collecting past documents that are required to be reported under STRF regulations after a school is authorized to enroll California students is necessary to anticipate future potential impacts on STRF, and to assure that the school is capable of maintaining records required under STRF. The current STRF assessment under 5 CCR section 76120 is two dollars and 50 cents per \$1,000 of institutional charges per student, rounded to the nearest thousand dollars. If the institution closes, the student may then recoup any "economic loss" as defined in 5 CCR section 76000(c).

The form is asking for records for a period of five years to ensure the reporting covers the entirety of the institution's registration period. This length of time is also consistent with 5 CCR section 71930(b)(1) for other records, making the act of record retention simpler for applicant institutions by keeping the lengths of time the same. The form asks for a spreadsheet for new applications to demonstrate the institution knows what it needs to be collecting and can be successful in collecting that information.

The Bureau is responsible for maintaining the fund, and the fund balance must be kept between \$20 million and \$25 million under California CEC section 94925. Therefore, it is important that the Bureau be aware if any additional contributions to the fund are likely to raise the balance of the fund so that it approaches the \$25 million threshold, which would require a lowering of the per student assessment.

15. Amend the Application for Registration or Re-registration of Out-of-State Institutions form to add a new Section 9 titled “EXPLANATION OF PRIOR OR PENDING ACTIONS” followed by, “For the purposes of this section, “controlling officer” shall mean “person in control” as defined in California Education Code (CEC) section 94856 and “controlling interest” or “controlling investor” shall mean a person who owns 25% or more in stock of the institution as set forth in CCR section 71130.”

Add the question, “1. Has the institution, or a predecessor institution under substantially the same control or ownership (as defined in Education Code sections 94822 and 94823), had its authorization or approval revoked or suspended by a state or by the federal government, or, within five years before submission of the registration, was subject to an enforcement action by a state or by the federal government that resulted in the imposition of limits on enrollment or student aid, or is subject to such an action that is not final and that was ongoing at the time of submission of the registration?” with two check boxes labeled, “Yes (statement attached)” and “No (initial.)”

**Specific Purpose:** AB 1344 amended CEC section 94801.5 to require that out-of-state institutions that want to enroll California students submit certain background information about their legal history and their recent regulatory experiences in other states, the federal government, and accrediting organizations. The most convenient way to have these institutions submit this information, and the most efficient way for the Bureau to gather and evaluate it, is to revise the Application for Registration or Re-registration of Out-of-State Institutions form, which is incorporated by reference in 5 CCR section 71396, and put the request for the information clearly and explicitly in the form.

To give institutions a clear idea of what is required to be submitted, the Bureau is clarifying the definition of “controlling officer” to mean a “person in control” as defined in CEC section 94856, and a “controlling investor” is one owning 25% or more of a firm’s stock, as used in 5 CCR section 71130. As several of the subsequent questions use the terms “controlling officer” and “controlling investor” it is useful to have an established definition.

The purpose of the first question in Section 9 is to determine if the institution has been in legal trouble with the federal government or the government of another state to the extent that its authorization or approval was revoked or suspended, or if it had been subject to an enforcement action (that is, an action taken in order to enforce the obeying of the law). The Bureau might be aware of any enforcement actions taken against in-

state institutions, but out-of-state institution might have run afoul of their local state regulators without the Bureau being aware.

**Necessity:** Newly added Section 9 is entitled “EXPLANATION OF PRIOR OR PENDING ACTIONS” to clearly indicate to the applicant the subject matter of the section, consistent with the titling conventions of the other sections of the form.

This newly added section also adds a definition of “controlling officer” and “controlling investor.” As several of the questions in Section 9 refer to the acts of a “controlling officer” or “controlling investor,” it is necessary to provide applicants with a definition of those terms. The Bureau is using definitions that already exist in the Code as they are familiar to the Bureau and will make application of the definitions consistent with past usage.

This provision of the regulatory proposal incorporates the newly adopted CEC section 94801.5(a)(1)(E) and asks out-of-state institutions to provide information on whether the institution or a predecessor institution had been subject to discipline by having its authorization or approval revoked or suspended by a state or the federal government within five years of the submission of the registration, or was subject to an enforcement action by a state or the federal government within five years of the submission of the registration that resulted in limits on enrollment or student aid, or is subject to such an action that is not final and is ongoing at the time of the submission of the registration. Collection of this information is required by the new provisions of CEC section 94801.5, and the Application for Registration or Re-registration of Out-of-State Institutions for is the most logical place to assure that the requirement is complied with.

16. Amend the Application for Registration or Re-registration of Out-of-State Institutions form to add under the new Section 9 the question, “2. Has the institution, or a controlling officer of, or a controlling interest or controlling investor in, the institution or in the parent entity of the institution, had been subject to any education, consumer protection, unfair business practice, fraud, or related enforcement action by a state or federal agency within five years prior to submitting the registration. If so, the institution shall provide the bureau a copy of the operative complaint with the registration.” with two check boxes labeled, “Yes (statement attached)” and “No (initial.)”

**Specific Purpose:** In addition to serving the same purpose of implementing AB 1344 as noted for Section 9, Question 1, the purpose of this section is to allow the Bureau to have information on the institution’s history of compliance with consumer protection related laws, while the previous section inquired about legal issues regarding the operation of the educational institution. As above, while the Bureau might be able to track actions involving in-state institutions, the Bureau would probably be unaware of any consumer protection actions against an out-of-state institution.

**Necessity:** This provision of the regulatory proposal incorporates the newly adopted CEC section 94801.5(a)(1)(F) and asks out-of-state institutions to provide information on whether or not the institution, or a controlling officer of, or a controlling interest or controlling investor in, the institution or in the parent entity of the institution, had been subject to any education, consumer protection, unfair business practice, fraud, or related enforcement action by a state or federal agency within five years prior to submitting the registration, and if so to provide the bureau a copy of the operative complaint with the registration. Collection of this information is required by the new provisions of CEC section 94801.5, and the Application for Registration or Re-registration of Out-of-State Institutions for is the most logical place to assure that the requirement is complied with.

17. Amend the Application for Registration or Re-registration of Out-of-State Institutions form to add under the new Section 9 the question, “3. Is the institution currently on probation, show cause, or subject to other adverse action (as defined at 34 CFR sec. 602.3(b)), or the equivalent thereof, by its accreditor or has had its accreditation revoked or suspended within the five years before to submitting the registration?” with two check boxes labeled, “Yes (statement attached)” and “No (initial.)”

**Specific Purpose:** In addition to serving the same purpose of implementing AB 1344 as noted for Section 9, Question 1, AB 1344 amended CEC section 94801.5 to require that out-of-state institutions that wanted to enroll California students submit certain background information about their legal history and their recent regulatory experiences in other states, the federal government, and accrediting organizations. The most convenient way to have these institutions submit this information, and the most efficient way for the Bureau to gather and evaluate it, is to revise the Application for Registration or Re-registration of Out-of-State Institutions form, which is incorporated by reference in 5 CCR section 71396, and put the request for the information clearly and explicitly in the form.

The purpose of this section is to determine if the institution had been in trouble with an accrediting agency. Having been placed on probation, show cause, or subject to an adverse action as defined in 34 CFR section 602.3(b), would be important information for the Bureau to have in determining if allow California students to enroll with the institution posed a risk to those students.

**Necessity:** This provision of the regulatory proposal incorporates the newly adopted CEC section 94801.5(a)(1)(G) and asks out-of-state institutions to provide information on whether the institution is currently on probation, show cause, or subject to other adverse action, or the equivalent thereof, by its accreditor or has had its accreditation revoked or suspended within the five years before to submitting the registration. Collection of this information is required by the new provisions of CEC section 94801.5, and the Application for Registration or Re-registration of Out-of-State Institutions for is the most logical place to assure that the requirement is complied with.

18. Amend the Application for Registration or Re-registration of Out-of-State Institutions form to add under the new Section 9 the question, “4. Has the institution, within five years before to submitting the registration, settled, or been adjudged to have liability for, a civil complaint alleging the institution’s failure to provide educational services, including a complaint alleging a violation of Title IX of the federal Education Amendments of 1972 (Public Law 92-318) or a similar state law, or a complaint alleging a violation of a law concerning consumer protection, unfair business practice, or fraud, filed by a student or former student, an employee or former employee, or a public official, for more than two hundred fifty thousand dollars (\$250,000). The institution shall provide the bureau a copy of the complaint filed by the plaintiff and a copy of the judgment or settlement agreement for any such judgment or settlement, and the bureau shall consider, pursuant to 94801.5(a)(1)(H)(2), all material terms and aspects of the settlement, including, for example, whether a student plaintiff remained enrolled or reenrolled at the institution?” with two check boxes labeled, “Yes (statement attached)” and “No (initial.)”

**Specific Purpose:** In addition to serving the same purpose of implementing AB 1344 as noted for Section 9, Question 1, the purpose of this section is to gather information on the institution’s legal history regarding more specific consumer protection issues that involved civil lawsuits and not actions taken by government authorities as were asked about in section 2 of the form. Knowing the institution’s history of litigation concerning its educational operations would provide the Bureau with important information to determine if allowing the institution to operate in California would pose a risk to California students.

**Necessity:** This provision of the regulatory proposal incorporates the newly adopted CEC section 94801.5(a)(1)(H) and asks out-of-state institutions to provide information on lawsuits and civil complaints, within five years prior to the registration, alleging a violation of Title IX of the federal Education Amendments of 1972 or a similar state law, or a complaint alleging a violation of law concerning consumer protection, unfair business practice, or fraud, filed by a student or former student, an employee or former employee, or a public official, for an amount greater than \$250,000, and to provide documentation of the complaint as well as a copy of any judgment or settlement agreement. Collection of this information is required by the new provisions of CEC section 94801.5, and the Application for Registration or Re-registration of Out-of-State Institutions for is the most logical place to assure that the requirement is complied with.

19. Amend the Application for Registration or Re-registration of Out-of-State Institutions form to add under the new Section 9 the request, “5. Does the institution currently contract with any third parties for advertising, recruiting, instruction, or student services activities which, to the institution’s knowledge, have settled, or been adjudged to have liability for, a civil complaint concerning

consumer protection, unfair practices, or fraud, for more than two hundred fifty thousand dollars (\$250,000)? If yes, the institution shall provide the bureau a copy of any contract between the institution and the third party and a statement listing the case name, case number and court or jurisdiction where the civil complaint was filed.” Followed by a check box and “Yes (statement attached)” and another check box followed by “No” a space, and “initial”

**Specific Purpose:** The question under Section 9, number 4, asks about an institution’s direct civil liability to students that was adjudged to be worth in excess of \$250,000. However, institutions can sometimes escape direct civil liability by contracting with outside vendors who may be found to be liable to students in an amount exceeding \$250,000 for acts done on behalf of the institution. The text of AB 1344 expressly requires the Bureau to inquire about any direct civil liability an institution may have incurred, but it leaves open the possibility of indirect culpability through a third party that was found to be liable. This request for documentation of any liability by outside parties contracted with by the institution closes that loophole by expressly requiring disclosure of any such liabilities.

**Necessity:** The previous subsection being added to the Application for Registration or Re-registration of Out-of-State Institutions form, Section 9 number 4, is legislatively mandated to determine whether an institution has incurred any direct legal liability in the amount greater than \$250,000 under a lawsuit that involves consumer protection, unfair practices, or fraud. While this information will assist the Bureau in making a determination to grant or deny an application by an out-of-state institution to operate in California, it would further assist the Bureau if it was made aware of any indirect liability incurred by a third party working on behalf of the institution for a claim based on similar circumstances.

Given the complex legal status of some postsecondary institutions, the Bureau should be made aware of both direct and indirect legal liabilities for consumer protection, unfair practices, and fraud incurred by the institution being evaluated and by the third parties it legally contracts with. A school with a pattern of contracting with third parties who are repeatedly held liable for consumer protection, unfair practices, or fraud should be subject to scrutiny before being allowed to operate in California.

20. Amend the Application for Registration or Re-registration of Out-of-State Institutions form to add under the new Section 9 the request, “6. Is the institution aware of current or former students having filed borrower defense claims as described in 34 C.F.R. section 685.206 with the Department of education in the most recent five years? If yes, the institution shall provide the Bureau with the number of known borrower defense claims filed in each year of the most recent five-year period.” The statement is followed by a check box with “Yes (statement attached)” and another check box followed by “No” and a space and then “initial”.

**Specific Purpose:** In 2015 Corinthian Colleges suddenly closed, which left many of its students with student loan debt that they claimed they would not have undertaken but for fraudulent statements made by Corinthian’s personnel. As a result, the United States Department of Education adopted a federal regulation, 34 CFR section 685.206, which provided student loan borrowers the ability to have their student loan debt forgiven if they could show that it was induced by fraud or misconduct on the part of their school.

Therefore, the number of students who have applied for borrower relief from the Department of Education is an indicator of whether an institution had a history of engaging in fraud or misconduct with its students. While AB 1344 mandated that the Bureau inquire about the number of civil suits filed against an institution by its student, the number of borrower defense claims filed would be a more accurate representation of fraud or misconduct by a school, as borrower defense claims made be made without having to hire an attorney and initiate costly and time-consuming civil proceedings.

The use of borrower defense claims, which is a relatively new process, is becoming increasingly widespread. According to a June 16, 2021, U.S. Department of Education press release, the Department approved 18,000 student claims totaling \$500 million for students who had attended ITT Technical Institute, bringing the total loan forgiveness amount up to \$1.5 billion for about 90,000 borrowers.

**Necessity:** The legislative mandate to collect information on civil complaints against an institution attempting to register as an out-of-state school indicates that such information was seen as critical in the Bureau’s evaluation of such institutions. However, asking schools for information on the number of civil complaints filed against them for consumer protection, unfair business practices, fraud, or a violation of Title IX of the Higher Education Act, presents an incomplete picture. Many students might be discouraged from filing such complaints, given the potential for high legal fees and a perception that such a suit might be difficult to win. Also, if the school closed because it went bankrupt, filing a civil suit against the school might be perceived as futile by the student.

However, making a borrower defense claim with the U.S. Department of Education would provide a more complete picture of a school’s possible misdeeds. Students do not need to hire an attorney to file a claim, the cost of filing a claim is minimal, and since the result is forgiveness of the student loan debt, the fact the school went bankrupt would be irrelevant. Having institutions registering or re-registering to operate in California as an out-of-state institution provide information that they are aware of about students who have filed a borrower defense claim is the only way to get a more complete picture of a school’s history in how it deals with its students regarding issues of consumer protection fraud, and unfair practices.

21. Amend the Application for Registration or Re-registration of Out-of-State Institutions form to add under the new Section 9 the request, “7. Has the applicant or any person in control of the institution (as defined in CEC 94856) ever been convicted of a crime substantially related to the operation of an

institution of higher education? For the purposes of this question, “substantially related” shall have the meaning set forth in CCR section 75060.

If yes, the institution shall provide the Bureau with a statement listing the name and title of the individual, and the details regarding any criminal conviction on a separate sheet attached to this application including: the date and place of arrest, name of court, court case number, code section violated, brief explanation of the offense, the sentence imposed and any information regarding rehabilitation efforts that the applicant or person in control would like to submit.

Note: Applicants or persons in control are not required to disclose any of the following:

(i) Convictions dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code (if such expungement occurred, please provide a copy of the court document showing the dismissal of the applicable criminal conviction(s) with this application);

(ii) Felony convictions for which the person has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code;

(iii) Convictions that were adjudicated in the juvenile court; or,

(iv) Convictions under California Health and Safety Code sections 11357(b), (c), (d), (e), or section 11360(b) which are two years old or older.”

Add a check box followed by “Yes (statement attached)” and another check box followed by “No \_\_\_\_\_(initial)”

**Specific Purpose:** The Bureau is aware of several cases in recent years of individuals engaging in criminal behavior at a private institution of higher education, having their ties with that institution severed as a consequence, and then continuing to operate in the higher education field through a different corporate entity. An out-of-state institution applying to operate in California could be operated by, or employ in key positions, individuals that have previously been found guilty of criminal conduct in the operation of an institution of higher education and the Bureau would have no way of learning this through the approval process.

California Business and Professions Code section 480.2 expressly allows the Bureau to deny an application on the grounds that an applicant has been convicted of a crime, but only if the crime is “substantially related to the qualifications, functions, or duties of the business or profession” in which the application is made. The information required to be submitted by question 7 in Section 9 attempts to establish if the Bureau has grounds under Business & Professions Code section 480.2 to deny the application. Business and Professions code section 480.2 also contains several limitations on the criminal

background information that can be requested, and these are incorporated into the text of the application.

**Necessity:** Allowing out-of-state private postsecondary institutions to offer programs to California students without establishing the criminal backgrounds of those in charge would expose California students to an acceptable risk. The Bureau is exercising its mandate under Business & Professions Code section 480.2 to ask out-of-state institutions to supply relevant criminal background information, in order to allow the Bureau to protect California students from such a risk, while at the same time protecting the privacy of the individuals by limiting disclosure of information that is excluded from being collected under the terms of Business and Professions Code section 480.2.

California law excludes a number of kinds of criminal convictions from being considered for licensing under the Business and Professions Code and other statutes. The list of convictions that do not have to be revealed to the Bureau in response to a question about past convictions include: convictions dismissed pursuant to Penal Code sections 1203.4 *et seq.* which are excluded under Business and Professions Code section 480.2(c); felony convictions for which the person has obtained a certificate of rehabilitation, which may not be considered by the Bureau under Business and Professions Code section 480.2(b); convictions adjudicated in a juvenile court, which are excluded under Business and Professions Code section 480(d); and cannabis-related crimes which are two years old or older, which the state is not supposed to keep records of for more than two years under Health and Safety Code section 11357.5, and public agencies are not supposed to inquire about under Health and Safety Code section 11361.7. These exceptions need to be listed on the form to inform applicants of their privacy rights under the law.

22. Amend the Application for Registration or Re-registration of Out-of-State Institutions form to add under the new Section 9 the request, “8. Attach copies of the policies and procedures under which a student may withdraw from or cancel enrollment, and the institution’s policy for refunds, if not included in the catalog and/or enrollment agreement in Section 8.” Followed by “Documentation attached:” and a space followed by “(initial)”

**Specific Purpose:** California CEC section 94885, which establishes Minimum Operating Standards for private postsecondary schools in California, directs the Bureau to adopt regulations that include a requirement that institutions maintain a withdrawal policy and provide refunds. The terms of cancellation, withdrawal, and refund policies are spelled out in California CEC section 94920. The Bureau’s regulations regarding withdrawals and refunds are found at 5 CCR section 71750.

Out-of-state institutions applying to operate in California might have withdrawal, cancellation, and refund terms that vary from those required by statute and regulation in California. The Bureau should know, when evaluating an institution’s application to operate in California, how much these key policies differ from those that will apply to California students.

**Necessity:** An institution’s policies regarding cancellations, withdrawals, and refunds are important policies for the protection of students. Out-of-state schools applying to operate in California may have policies that are significantly different than those spelled out in the California Education Code and the California Code of Regulations.

The Bureau should be aware when evaluating an application from an out-of-state institution what its past policies regarding cancellations, withdrawals, and refunds has been in the past five years, and whether the institution will be able to apply the California legal protections to California students they plan to enroll.

To do this, the Bureau needs access to an institution’s withdrawal, cancellation, and refund policies. If this information was provided in the institution’s response to Section 8, it need not be provided here as well.

23. Amend the Application for Registration or Re-registration of Out-of-State Institutions form to renumber the former Section 8 as “10” and delete the words, “By submitting this form and signing below,” at the start of the second sentence. Add the words, “By submitting this form and signing below, this institution agrees, as a condition of registration, to be bound by Section 94801.5 of the California Education Code. I acknowledge that the institution’s registration may be rejected, conditioned, or revoked as provided by Section 94801.5.” after the second sentence.

**Specific Purpose:** The purpose of this change is to maintain the numerical progression of the questions asked on the Application for Registration or Re-registration of Out-of-State Institutions to make the form as clear and straightforward as possible.

The purpose of adding to the disclaimer by adding a provision that by signing the application and submitting it to the Bureau the institution agrees to be bound by CEC section 94801.5 is to comply with the terms of CEC section 94801.5(a)(2)(C), which requires a memorial from the institution that they agree to be bound by the approval process laid out in section 94801.5.

**Necessity:** As a new Section 8 was inserted into the form to add the new questions mandated by AB 1344, it was necessary to renumber what had been Section 8 as Section 9.

The necessity for adding the language stating that by signing and submitting the application the institution agrees to be bound by the terms of CEC section 94801.5 is to comply with the requirement of section 94801.5(a)(2)(C) that the Bureau, “[r]equire the initial registration, if approved, to memorialize that the institution agrees, as a condition of its registration, to be bound by this section and that its registration may be rejected, conditioned, or revoked for failure to comply with this section, as provided by subdivision (b).” The Bureau has elected to do this by including the institution’s memorial on the application, which is then signed and submitted to the Bureau, instead of asking institutions to sign and submit the memorial on a separate piece of paper.

24. Change the Bureau’s phone number in the Notice on Collection of Personal Information from “(916) 431-6959” to “(916) 574-8900.”

**Specific Purpose:** The Application for Registration or Re-registration of Out-of-State Institutions form contains a provision at the bottom of the form that informs applicants about their rights regarding their personal information. The notice contains the Bureau’s phone number, which when the form was created ten years ago, which was (916) 431-6959. The phone number has since been changed to (916) 574-8900. To make sure individuals can reach the Bureau as intended by the notice, the phone number is being updated.

**Necessity:** Notices to the public regarding contact information for government agencies should be accurate, so that individuals can communicate with the agency as anticipated by the notice. Therefore, it is important that the Notice on Collection of Personal Information contain the Bureau’s current phone number.

25. Amend footer of Application for Registration or Re-registration of Out-of-State Institutions to delete the revision date of “1/17” and add “8/22”.

**Specific Purpose:** This regulatory package is amending 5 CCR 71396 to incorporate by reference the form that is now being identified as “94801.5 (rev. 8/22)”. It is necessary to delete the obsolete revision date and to identify the revised form by this new revision date, which is done in the footer of the application document.

**Necessity:** It is necessary to properly identify the form being incorporated by reference into the regulations, and to do so the form must be amended to remove the previous revision date of the form and to add the new revision date. If this is not done, applicants cannot be sure they are completing and submitting the correct application form to the Bureau.

26. Amend 5 CCR section 71397(a) to add to the title, “, Conditional Registration and Grounds for Revocation”.

**Specific Purpose:** The title of section 71397 is being changed to reflect the changes in CEC section 94801.5, which now permit not only denial but also conditional approvals and revocation of approvals. Given the expanded options in the statute, the title of this section of the regulations should be changed to conform.

**Necessity:** The titles of regulatory sections need to accurately reflect the content of the section to make using the regulations easier. The scope of Section 71397 is being significantly expanded to implement to revisions to CEC section 94801.5 made by AB 1344. Therefore, it is necessary to change the title of the section to reflect this expanded scope.

27. Amend 5 CCR section 71397(a) to delete the word, “grant”. Add “approve, condition registration upon meeting specified conditions or restrictions (“conditional registration”),” before “or deny” and add “approval to any applicant” at the end of the sentence.

**Specific Purpose:** The current regulatory language gives the Bureau two options in considering an out-of-state application, either to approve the application or deny it. The new language in CEC 94801.5 allows the Bureau to condition approval, as well as either accept or deny the application.

Now that the Bureau has three options when making a determination on an out-of-state application, the regulation must address all three possible outcomes. The new language spells out that the Bureau’s decision on an application may be an approval, a conditional registration, or a denial. The words “approval to any applicant” emphasize that the decision options (approval, conditional approval, denial) are the outcomes that apply to any and all applicants.

**Necessity:** Due to the passage of AB 1344, it is necessary to express to applicants that, unlike the previous version of the out-of-state application, that there are now three possible outcomes: approval, conditional approval, or denial. It is necessary to change the language in section 71397(a) to express all three outcomes, and state that these are the outcomes that will be given to all applicants.

28. Amend 5 CCR section 71397(a) by adding subdivision (1) which says, “Conditional registration shall be issued to those institutions which answer “yes” to any question in sections 7 or 9 of the Form Application 94801.5 referenced in section 71396 and for whom the Bureau determines that an unconditional registration is not in the public interest based on the criteria set forth in this section. For the purposes of this section, “action” shall include enforcement actions by state or federal authorities, civil actions, adverse action by an accreditor, borrower defense claim, or any other action as specified or disclosed in section 9 of Form Application 94801.5 referenced in section 71396. In determining if an unconditional registration is not in the public interest, the Bureau shall consider the following:

- (A) Nature and severity of the act(s), demonstrated in the action under consideration.
- (B) Actual or potential harm to any consumer, student or the general public.
- (C) Prior record of any actions.
- (D) Number and/or variety of current actions.

(E) Any explanation of the facts and circumstances surrounding the action(s) and any remediation efforts the institution undertook as a result of the action.

(F) In the case of any action involving a criminal conviction, compliance with terms of sentence and/or court ordered probation.

(G) Overall criminal record disclosed to the Bureau, if any.

(H) Time passed since the action(s) or offense(s) occurred.

(I) Whether or not the applicant cooperated with the Bureau's investigation, other law enforcement or regulatory agencies, and/or the injured parties.

(J) Recognition by the applicant of its wrongdoing and demonstration of corrective action to prevent recurrence.

**Specific Purpose:** The purpose of adding subdivision (1) to section 71397(a) is to inform out-of-state institutions considering applying to enroll California residents as to what standards would result in their application resulting in "conditional registration" by the Bureau.

Conditional registration will be an option for any school that triggers a red flag either by answering "yes" to a question in Sections 7 or 9 on the application, which ask about institutional acts and financial responsibility over the prior five years, or the institution indicates that it fails to meet the Student Tuition Recovery Fund requirements set in CCR section 71396, or both. Unlike "provisional approvals" at some other boards or bureaus, because these are red flags triggered by past actions, there is no possibility of the institution taking corrective measure to eliminate the issue. Conditional approval will then be considered if, based on the enumerated criteria, the reason for the red flag indicates that unconditional registration is not in the public interest. Schools triggering a red flag by answering "yes" to questions of Sections 7 or 9, or does not meet the standards for the Student Tuition Recovery Fund, will be given notice and the opportunity to request an informal conference and, if one is requested, submit declarations or documents for consideration.

Because the term 'action' appears in the evaluation criteria in this section, for brevity the word "action" is defined as including enforcement actions by state or federal authorities, civil actions, adverse action by an accreditor, borrower defense claims, or any other action as specified or disclosed in Section 9 of the out-of-state application form.

The criteria to be used by the Bureau in determining if a risk to students exists enough to justify a conditional registration are roughly the same ten criteria used by the Bureau under their Disciplinary Guidelines adopted under CCR section 75500, modified to be applicable to the issues raised by the questions in Section 9 of the Out-of-State Application. If, after applying the ten criteria listed, the Bureau determines the institution poses a potential risk to California students, the Bureau may grant a conditional

approval. The regulation then specifies that conditions on approval include more frequent reporting requirements or enrollment limits.

If the Bureau applies the ten criteria and determines that unconditional approval of the applicant is not in the public interest, then the Bureau shall consider the options to grant conditional registration or deny the application. This will allow the Bureau to exercise its mandate to protect students from the risk of harm, as expressed in Education Code 94801.5(b)(2), which allows the Bureau to revoke an out-of-state institution's approval to operate in California if the "bureau issues a written finding that there is a substantial risk posed to California residents by the institution continuing to enroll California residents." This applies the same standard, but to the approval process.

**Necessity:** The need to create standards for decision-making arises from the fact that before the passage of AB 1344 the Bureau could exercise no discretion in processing applications from out-of-state institutions, but had to approve any application that was properly filled out. Education Code section 94801.5(a)(2)(A) expressly gives the Bureau discretion in making its decision to approve, conditionally approve, or deny an application.

In establishing standards for deciding whether to grant an out-of-state institution "conditional registration," the Bureau has decided to utilize the existing criteria adopted in its Disciplinary Guidelines, which are incorporated by reference in CCR 75500. These ten criteria provide a broad set of circumstances that can be applied to a variety of factual situations.

The first criterion, "Nature and severity of the act(s) demonstrated in the action under consideration" is similar to the first criteria in the Disciplinary Guidelines except that it does not include "offense(s) or crime(s)" included there, and "in the action" is added before "under consideration" to refer back to the definition of "action" being applied in this section. The more specific definition of "actions" makes the inclusion of broad categories like "offense(s) or crime(s)" superfluous.

The second criterion, "Actual or potential harm to any consumer, student or the general public" is taken verbatim from the Disciplinary Guidelines.

The third criterion, "Prior record of any actions," replaces the words, "discipline or notice of violations" in the Disciplinary Guidelines with "any actions." This is to refer back to the definition of "actions" being applied in this section.

The fourth criterion, "Number and/or variety of current actions" replaces the word "violations" in the Disciplinary Guidelines with the word "actions," which is being applied in this section.

The fifth criterion, "Any explanation of the facts and circumstances surrounding the action(s) and any remediation efforts the institution undertook as a result of the action" is a combination of two of the criteria in the Disciplinary Guidelines, "Mitigation evidence" and "Rehabilitation evidence." The phrasing here encompasses the Disciplinary Guideline concepts that there would be consideration of mitigating circumstances to explain the institution's actions, or that the institution has taken steps

to correct any damage that was caused by its actions as an expression of remorse or rehabilitation.

The sixth criterion, “In the case of any action involving a criminal conviction, compliance with terms of sentence and/or court ordered probation” modifies the Disciplinary Guidelines criteria by adding, “any action involving” before “a criminal conviction,” once again to use the term “action” as it is being applied in this section.

The seventh criterion, “Overall criminal record if disclosed to the Bureau, if any” differs from the Disciplinary Guidelines by adding the words, “disclosed to the Bureau, if any,” which are necessary to be clear that this only applies to those criminal convictions that are required to be reported to the Bureau. There are a number of circumstances under which a criminal conviction does not have to be reported to a state agency, and this criterion must make it clear that it only applies to those convictions that must be reported and not to unreported convictions.

The eighth criterion, “Time passed since the action(s) or offense(s) occurred” is identical to the Disciplinary Guidelines except to replace “act(s)” with the more applicable, “action(s).

The ninth criterion, “Whether or not the applicant cooperated with the Bureau’s investigation, other law enforcement or regulatory agencies, and/or the injured parties” is identical to the Disciplinary Guidelines criteria except to replace the word, “respondent” with the more applicable, “applicant.”

The tenth criterion, “Recognition by the applicant of its wrongdoing and demonstration of corrective action to prevent recurrence” is also identical to the Disciplinary Guidelines criteria except to replace “respondent” with the more applicable, “applicant.”

The decision to use the criteria is triggered by a “yes” answer to the questions in Sections 7 or 9 of the application, or an answer that indicates the institution fails to meet the requirements of the Student Tuition Recovery Fund. Institutions that are denied or issued a conditional registration are notified and given the opportunity to request an informal conference and submit declarations and documentation to the Bureau for consideration. An institution that does not trigger either of these will be unconditionally approved if the form has been filled out properly and all questions are answered, and all requirements are complied with. An institution may also be approved if it triggers use of the criteria, but the Bureau determines there is no risk of harm to California residents.

29. Amend 5 CCR section 71397(a) to add subdivision (2) which says, “(2) Conditions placed upon the approval of an application include increased or more frequent reporting requirements on a regular basis or as requested by the Bureau, and limitations on enrollment of Californians in some or all programs.”

**Specific Purpose:** Out-of-state institutions that seek approval to operate in California might be concerned if they had no idea what sort of conditions the Bureau might apply to their registration. Some might be discouraged from applying if they were afraid that conditions applied to their registration might be excessive or onerous.

The Bureau examined the question of what conditions would be appropriate to impose on out of state institution at its Advisory Committee meeting on February 23, 2022. After discussion, the Bureau decided that the only appropriate conditions that would be considered were either more frequent reporting requirements or a cap on the enrollment of California students.

To make sure out-of-state institutions know what to expect when going through the Bureau’s process for evaluating out-of-state institution, the Bureau is expressly stating what conditions might be imposed by the Bureau on an out-of-state institution.

**Necessity:** It is necessary for the Bureau to provide substantive guidelines for out-of-state institutions as to how the Bureau might evaluate their application. In saying that “conditional registration” is one possible outcome, it is necessary to be transparent about what the conditions might entail.

If the concern is that the institution’s background information indicates that the institution is erratically administered or has fluctuations in some key elements of operation, then the Bureau might consider approving the institution, but requiring that the institution submit reports more frequently than other institutions.

If the Bureau’s concern stems from the fact that the institution’s financial standing appears shaky, and the institution might be at risk of closing suddenly and thereby inconveniencing students and placing a burden on the Student Tuition Recovery Fund (which reimburses students whose schools close suddenly), then the Bureau might attempt to limit the risk by allowing the institution to only enroll a fixed number of Californians.

Identifying the kinds of conditions that might be placed on out-of-state institution both encourages out-of-state institutions to apply to operate in California, and helps the Bureau to focus when coming to a decision whether to approve, deny, or conditionally approve an out-of-state applicant.

30. Amend 5 CCR section 71397(a) to add subdivision (3), “(3) A denial shall be issued if the Bureau determines there is a substantial risk of harm posed to California residents by the institution if it were permitted to enroll California residents based on the criteria enumerated in subdivision (a)(1) or on the applicant’s failure to comply with any requirement set forth in this Article or Section 94801.5 of the Code.”

**Specific Purpose:** Proposed regulation section 71397(a)(3) establishes the criteria for the Bureau to issue a denial to an out-of-state applicant who applies to enroll California residents. The purpose is to inform institutions applying, or considering applying, what the basis would be for their application to be rejected.

The standard set out in 71397(a)(3) establishes that an institution’s application will be denied if they trigger one of the red flags described above, and an application of the criteria set out in 71397(a)(1) by the Bureau leads them to the conclusion that allowing the institution to enroll California residents would pose a substantial risk of harm to those residents, or the institution does not comply with the requirements of Section 94801.5 of the Code, which establishes the ability of out-of-state institutions to operate in California. As noted above, Education Code 94801.5(b)(2), which allows the Bureau to revoke an out-of-state institution’s approval to operate in California if the “bureau issues a written finding that there is a substantial risk posed to California residents by the institution continuing to enroll California residents.” This applies the same standard, but to the approval process.

**Necessity:** It is necessary to set out the criteria for denial of an application by an out-of-state institution to enroll California residents to give out-of-state institutions considering applying to operate in California notice as to whether they are likely to have their application denied.

The standard being created is one that is based on the stated criteria that are already applied in the Bureau’s disciplinary guidelines and adapted into section 71397(a), and the compliance with the provisions of CEC section 94801.5, violation of which are grounds for revocation under section 94801.5(b)(2). Out-of-state institutions are being given information on what factors will be considered by the Bureau, and how the Bureau will consider them that will lead to a denial of the application.

31. Amend 5 CCR section 71397(a) to add a subdivision (4) which says, “(4) An institution shall be registered in accordance with Section 94801.5 of the Code if it: (A) meets all requirements of this Article and Section 94801.5 of the Code, (B) there are no grounds for denial as set forth in this section.”

**Specific Purpose:** The purpose of adding subdivision (4) to section 71397(a) is to follow the previous two subdivisions, which provided the standards for being allowed conditional registration in proposed section 71397(a)(1), and the standards for denial in proposed section 71397(a)(2). Proposed section 71397(a)(4) provides the process for implementing the decision to allow conditional registration decision under section 71397(a)(1), or unconditional registration an out-of-state institution to enroll California residents.

The process is clearly laid out as the applicant meeting the statutory requirements of CEC section 94801.5 and the regulatory requirements of this Article, and having no grounds for a denial under the terms of the previous subdivisions of section 71397. This would therefore include both unconditional registration and conditional registration, but

exclude any application that had been denied. This subdivision, combined with the text of the previous subdivisions under section 71397(a), should provide guidance for out-of-state institutions as to what standards the Bureau will apply when deciding to allow conditional registration, allow unconditional registration, or deny the application.

**Necessity:** Under the amended language of CEC section 94801.5(a)(2), the Bureau may, “approve, deny, or condition initial registration” the application of out-of-state institutions seeking to enroll California residents. The previous subdivisions proposed to be added to section 71397(a) set out the standards for conditional registration and denial; this proposed language is necessary to establish the process for an out-of-state institution to proceed after a determination by the Bureau that it should be either conditionally registered or approved without condition.

The basis for approval is being in compliance with the relevant statutes and regulations governing out-of-state institutions operating in California, and having no basis for the imposition of a denial as set out in sections 71397(a)(1) and (3). This is needed to inform out-of-state institutions of how the approval process will proceed once the Bureau makes its determination.

32. Amend 5 CCR section 71397(a) by adding a subdivision (5) which says, “(5) Any registration subject to this section shall be made effective by the Bureau upon the applicant’s meeting the requirements specified in subdivision (a)(4).”

**Specific Purpose:** The purpose of the proposed subdivision (4) under 5 CCR section 71397(a) is to establish when, exactly, the Bureau’s approval of an application from an out-of-state institution becomes effective. Under the provisions of CEC section 94801.5 before it was amended, the Bureau could only refuse to grant approval if the application was improperly filled out or lacked critical information. However, now that the legislature has granted the Bureau discretion to approve the out-of-state applications and the Bureau now has three options available to it—approval, conditional registration, and denial—the point at which the Bureau’s decision becomes effective is less clear.

Section 71397(a)(5) is being added to establish that an out-of-state institution’s approval to operate begins when the Bureau determines that the provisions of section 71397(a)(4) are met. Upon that happening, the Bureau is directed to make the registration effective at that point.

**Necessity:** This proposed language is necessary to establish when the Bureau is required to make their determination of an out-of-state institution’s registration status effective by stating it is at the time the Bureau makes its determination that the out-of-state institution meets the statutory and regulatory requirements for registration and has not done anything that would result in a denial. Without such language, an institution might not know when the approval of its application was effective if that was not clearly communicated by the Bureau.

33. Amend 5 CCR section 71397(b) of Division 7.5 of Title 5 of the California Code of Regulations to create a new subdivision (1) and add the words “or issued a conditional registration shall be given written notice of the Bureau’s decision to deny or condition registration, the reason for the decision, and the right to request an informal conference in accordance with this section.” after the words, “under this Article”. The remainder of current subdivision (b) is moved to a new subdivision (c).

**Specific Purpose:** Under the prior CEC section 98401.5, the only reason for an out-of-state application to be rejected was if the form was filled out incorrectly. Under the new statutory language, the Bureau can exercise its discretion and weigh the evidence submitted to it in the Out-of-State Application. Therefore, it is important to establish that when the Bureau makes a decision that is against the applicant, the Bureau will inform the applicant of the decision, the Bureau’s reasons for making it, and the applicant’s right to appeal the decision to an informal conference.

**Necessity:** It is necessary to inform applicants of the Bureau’s process in deciding on applications from out-of-state institutions now that the Bureau has the authority to use discretion, and now has the option to reject the applicant, approve, or grant a conditional approval. The applicant did not need to be given the reasons for the Bureau’s decision when the Bureau could not exercise discretion, but now that it may the unsuccessful applicant needs to be advised of the Bureau’s reasons for its decision in order to decide if it wishes to appeal the decision.

It is necessary to advise applicants that the Bureau’s decision to grant conditional registration is an adverse decision that they may appeal by requesting an informal conference. Without being so informed, applicants might mistakenly believe that an appeal could only be made in the case of a denial.

34. Amend 5 CCR section 71397(b) to create a new subdivision (2) which says, “(2) If a conditional registration is issued, the written notice shall also specify the restrictions or conditions placed on the institution’s registration, and the factual basis for the restrictions or conditions.”

**Specific Purpose:** The purpose of the proposed section 71397(b)(2) is to assure applicants that in the case where the Bureau makes a determination that a conditional registration is warranted, the Bureau will apprise them not only of the restrictions, but also the factual basis upon which the Bureau is making its determination. As the Bureau previously did not have the authority to allow conditional registration, the issue needs to be addressed under the new language in CEC section 94801.5.

**Necessity:** It is necessary to add language to the regulation to make sure the notice sent to applicants approved for conditional registration is complete, fully informs them of the circumstances surrounding the Bureau’s decision, and allows them the opportunity to challenge the decision upon appeal if they choose to do so. As granting conditional approvals was outside the Bureau’s authority before the statutory amendments to CEC

section 94801.5 in 2019, this issue could not have arisen under the regulations adopted to implement the statute at that time.

35. Amend 5 CCR section 71397(b) to create a new subdivision (3) which says, “(3) Failure to comply with any restriction or condition placed on a registration by the Bureau is grounds for revocation of the registration. Any institution determined to be in noncompliance with any restriction or condition of a conditional registration shall receive written notice of the Bureau’s decision to revoke the registration, the reasons for the decision and the right to request an informal conference in accordance with this section. The written notice shall also contain a written finding that there is a substantial risk of harm posed to California residents by the institution continuing to enroll California residents and the reasons for that finding using the criteria set forth in subdivision (a)(1).”

**Specific Purpose:** Prior to the amendments to CEC section 94801.5 in 2019, the Bureau did not have the authority to grant conditional approvals, so there was no reason to create regulations concerning the actions of an out-of-state institution granted a conditional approval. Now that the Bureau has the authority to grant out-of-state institutions the ability to be conditionally approved, it is necessary to create a regulatory process for the possibility that an institution granted conditional approval will not comply with the terms of the approval.

The purpose of the proposed language is to create a process by which the Bureau can inform institutions that the Bureau believes they are in violation of the terms of their approval, the reason for that belief, the consequence that the Bureau has revoked the institution’s approval, and the institution’s right to request an informal conference to appeal the decision.

**Necessity:** It is necessary for the Bureau to create a process for handling an eventuality that was not possible under the previous statutory provisions of CEC section 94801.5, namely the process of revoking a conditional approval based on the Bureau’s determination that the conditions of the approval have been violated by the out-of-state institution. Now that the Bureau has been granted the statutory authority to grant an approval to out-of-state institutions conditioned on certain circumstances, it is necessary to establish a process that assures that the institution has adequate legal notice of the Bureau’s decision, the basis for the decision, the consequences of the decision, and how to appeal the decision.

The proposed language for section 71397(b)(3) is needed to meet the due process requirements for out-of-state institutions granted conditional approval in the circumstance that the Bureau decides that they have violated the terms of the conditional approval and are operating outside the terms of the approval granted by the Bureau.

36. Amend 5 CCR section 71397 of Division 7.5 of Title 5 of the California Code of Regulations to create a new subdivision (c) that is an amended version of what was previous part of subdivision (b) by adding “The applicant” before “may reapply”, adding, “if denied” after “may reapply,” deleting the word, “denial” in the first sentence and replacing it with, “decision to deny, revoke or issue conditional registration,”. In the second sentence after the words “service of the denial” add, “revocation or conditional registration”.

**Specific Purpose:** Because the Bureau had no discretion in evaluating applications from out-of-state institutions, the current regulations could put the process for dealing with a denial in one subdivision. However, now that the Bureau has discretion in evaluating out-of-state applications, and because there are now three possible outcomes instead of two, what is currently subdivision (b) of section 71397 is being split into (b) and (c), where (b) specifies the notice requirement on the Bureau, while (c) describes the process an institution may follow if they receive either a conditional approval or a denial.

The language is largely unchanged from the current language, except that the word “denial” is being replaced with, “decision to deny, revoke, or issue conditional registration,” in the first sentence, and “revocation or conditional registration” are added to the second sentence. This is because under current regulations a denial was the only adverse decision possible, but now an institution might appeal either a denial, a revocation, or a conditional approval.

**Necessity:** It is necessary to break up what is currently in one subdivision of section 71397 and put similar language in two subdivisions because the possible outcomes from the Bureau’s review are more complicated now that there are three possible outcomes instead of two. It is necessary to replace the word “denial” to replace it with a term that more accurately reflects the possible adverse decisions that may be appealed, a decision to deny or issue a conditional approval. The term “the applicant” is being added to include in subdivision (c), which was previously part of subdivision (b), to describe who the subdivision applies to. The term “if denied” is being added to specify when the reapplication or request may occur.

37. Amend 5 CCR section 71397(c) of Division 7.5 of Title 5 of the California Code of Regulations to re-letter it as (d), and add, “or out-of-state institution” after the word, “applicant” to the end of the first sentence.

**Specific Purpose:** The creation of a new subdivision (c) by splitting the current subdivision (b) into two subdivisions requires the re-lettering of subsequent subdivision for coherency. Therefore, what is currently subdivision (c) is being re-lettered as (d). The purpose of addition “or out-of-state registered institution” to the text is to anticipate circumstances where the institution was not the entity applying for the registration.

**Necessity:** It is necessary regulations be ordered in a coherent fashion, so it is necessary to re-letter the subdivision for the structure of the regulation to make logical sense. It is necessary to add the distinction between the applicant and the out-of-state institution as there may be times when, due to corporate organization, the entity submitting the application is legally distinct from the out-of-state institution.

38. Amend 5 CCR section 71397(d) of Division 7.5 of Title 5 of the California Code of Regulations to re-letter it as (e), and add, “or out-of-state registered institution” after the word “applicant”.

**Specific Purpose:** The creation of a new subdivision (c) by splitting the current subdivision (b) into two subdivision requires the re-lettering of subsequent subdivision for coherency. Therefore, what is currently subdivision (d) is being re-lettered as (e). The purpose of addition “or out-of-state registered institution” to the text is to anticipate circumstances where the institution was not the entity applying for the registration.

**Necessity:** It is necessary that regulations be ordered in a coherent fashion, so it is necessary to re-letter the subdivision for the structure of the regulation to make logical sense. “Or out-of-state registered institution” is being added because of the circumstance where the party seeking the informal conference has been issued a conditional registration and is therefore registered prior to the request for a conference, or where the party seeking the conference is reapplying for registration.

39. Amend 5 CCR section 71397(e) of Division 7.5 of Title 5 of the California Code of Regulations to re-letter it as (f) and add the word, “modify” after “will affirm,” add the words “revocation, or issuance of a conditional registration” at the end of the first sentence. Add the word “modifying,” after “affirming”, and add the words, “ , revocation or conditional registration decision” after the words, “reversing the denial” in the second sentence. Add the words, “or out-of-state registered institution” before “to submit” in the second sentence

**Specific Purpose:** As previously described, the subdivision is being re-lettered due to the creation of an additional subdivision above. The decision of the Bureau on an out-of-state application may be either an approval, an approval with conditions, or a denial. Because of these options, the decision of the person presiding at the informal conference that may be requested by an applicant unsatisfied with the Bureau’s initial decision has more options that just a denial, as described in the current regulatory language. In addition to affirming or denying, the person overseeing the informal conference may also modify the decision by changing a denial into a conditional approval, or by changing a conditional approval into an unconditional approval. Because of these new possibilities, the proposed language adds the words “revocation, or issuance of a conditional registration” to the options available to the Bureau in the first sentence, and similarly adds, “revocation or conditional registration decision” to the second sentence. The purpose of adding “or out-of-state registered institution” to the second sentence is to clarify that this applies to both new applicants and to registered

schools that are seeking a renewal, in case anyone considers only new applicants to be “applicants.”

**Necessity:** Now that the Bureau has the authority to use its discretion in making a decision on an out-of-state application, there will now be more possible outcomes to an informal conference than there are currently. The outcome of the Bureau’s review might not be affirmation or reversal of the decision, but could be changing a denial to a conditional approval, or changing a conditional approval to unconditional approval or an approval with less onerous conditions. Therefore, it is necessary to adjust the words being used to describe the outcome of the review to include all of the available options the Bureau might utilize. To avoid any confusion as to what institutions this section applies to it is necessary to establish that it applies to out-of-state registered institutions applying for re-registration, in case anyone believes that “applicant” refers only to new applicants.

40. Amend 5 CCR section 71397 to add, “; 480.2, Business and Professions Code” to the end of the Reference section of the Note.

**Specific Purpose:** Among the changes being proposed, the Application for Registration or Re-Registration of Out-of-State Institutions form that is incorporated into section 71396 by references is being amended to add provisions of Business and Professions Code 480.2, which authorizes the Bureau to reject applicants if they have been convicted of a crime under certain circumstances, which may affect the Bureau’s decision made under section 71397. Because of this new language, the Reference section of the Note must be amended to include Business and Professions Code section 480.2 to be complete.

**Necessity:** It is necessary to amend the Note after 5 CCR section 71397 to include the reference to Business and Professions Code section 480.2, which is being incorporated into the Application for Registration or Re-Registration of Out-of-State Institutions to apply to decisions made by the Bureau under section 71397.

#### **IV. Technical, Theoretical, and/or Empirical Studies, Reports or Documents.**

- a. Memorandum on considerations on out-of-state registration applications is in the meeting materials for Bureau of Private Postsecondary Education Advisory Committee meeting on February 23, 2022, located on pages 74 and 75 at [https://www.bppe.ca.gov/about\\_us/meetings/materials/20220223\\_acm.pdf](https://www.bppe.ca.gov/about_us/meetings/materials/20220223_acm.pdf).
- b. A summary of the discussion is in the meeting materials of the May 17, 2022, Advisory Committee at [https://www.bppe.ca.gov/about\\_us/meetings/materials/20220517\\_acm.pdf](https://www.bppe.ca.gov/about_us/meetings/materials/20220517_acm.pdf) and located on page 9 of the meeting minutes.

## V. Economic Impact/Assessment Analysis

The regulatory proposal will have the following effects:

- It will not create or eliminate any jobs within the State of California because the regulations are applicable only to educational institutions physically located in other states.
- It will not create new businesses or eliminate businesses in the State of California because the regulations are only applicable to educational institutions physically located in other states.
- It will not affect the expansion of businesses currently doing business in the State of California because the regulations are only applicable to educational institutions physically located in other states.
- The regulatory proposal benefits the health and welfare of California residents by providing the Bureau for Private Postsecondary Education additional background information on out-of-state educational institutions that enroll California residents, which will enable the Bureau to do more thorough background investigations of these institutions in order to protect California residents from fraud and unfair practices.
- The regulatory proposal does not affect the state's environment because they require out-of-state educational institutions wishing to enroll California residents to answer questions about their legal background in other states.
- The regulatory proposal would not enhance worker safety because these are regulations are not relevant to the enhancement of worker safety, and are to enhance the Bureau's ability to investigate the background of out-of-state educational institutions.
- The regulatory proposal does not affect the state's housing needs because it is not relevant to the state's housing issues.
- The regulations authorize the Bureau to grant conditional approval status to out-of-state institutions with limited enrollment, which could result in fewer students attending these schools and reduced tuition and other education-related costs for these individuals. However, these students may opt to seek education elsewhere and would still incur costs.
- The Bureau notes, the regulations will impact out-of-state educational institutions, but an economic impact assessment is not included with this proposal pursuant to current law, the State Administrative Manual, and Department of Finance requirements.

## VI. Specific Technologies or Equipment

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

## VII. Consideration of Alternatives

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.

## VIII. 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:

This regulatory proposal extends the renewal-cycle period for out-of-state institutions from two years to five years, which is anticipated to result in a decrease in renewal registration workload costs and revenues. However, the provisions related to conditional approval, including increased disclosure requirements, limitations on student enrollment, and enforcement-related activities are anticipated to increase the Bureau's workload and costs.

The Bureau currently regulates 88 out-of-state institutions, which are scheduled to renew over the next two years and averages 5 new out-of-state institutions per year.

**Expenditures (Current vs. Proposed):** The Bureau's current out-of-state initial and biennial renewal registration workload and costs range from approximately \$39,788 to \$73,104 per year and up to \$554,706 over a ten-year period as follows:

Bureau for Private Postsecondary Education														
Out-of-State Institution Registration - Fiscal Impact (Costs)														
Current (Biennial Renewal Cycle)														
Registration and License Type	Costs	Applicants Per Year	Years Ongoing*										Total	
			1	2	3	4	5	6	7	8	9	10		
Out-of-State Institutions Initial Registration	\$812	Various	5	5	5	5	5	5	5	5	5	5	5	50
		<b>Sub-total:</b>	<b>\$4,060</b>	<b>\$4,182</b>	<b>\$4,307</b>	<b>\$4,436</b>	<b>\$4,570</b>	<b>\$4,707</b>	<b>\$4,848</b>	<b>\$4,993</b>	<b>\$5,143</b>	<b>\$5,297</b>	<b>\$46,543</b>	
Out-of-State Institutions Renewal Registration	\$812	Various	44	44	49	49	54	54	59	59	64	64	540	
		<b>Sub-total:</b>	<b>\$35,728</b>	<b>\$36,800</b>	<b>\$42,211</b>	<b>\$43,477</b>	<b>\$49,351</b>	<b>\$50,832</b>	<b>\$57,205</b>	<b>\$58,921</b>	<b>\$65,832</b>	<b>\$67,806</b>	<b>\$508,163</b>	
		<b>Total Costs:</b>	<b>\$39,788</b>	<b>\$40,982</b>	<b>\$46,518</b>	<b>\$47,914</b>	<b>\$53,921</b>	<b>\$55,539</b>	<b>\$62,053</b>	<b>\$63,914</b>	<b>\$70,975</b>	<b>\$73,104</b>	<b>\$554,706</b>	

\*3 Percent Cost Growth Per Year Ongoing

Note: Costs do not include Student Tuition Recovery Fund costs because these costs would be incurred regardless of this proposal

The regulations extend the current biennial renewal cycle to a five-year cycle, which will result in fewer applications received and processed per year. The regulations are anticipated to result in workload and costs ranging from approximately \$4,307 to \$47,509 per year and up to \$218,585 over a ten-year period as follows:

Bureau for Private Postsecondary Education Out-of-State Institution Registration - Fiscal Impact (Costs) Proposed (5-Year Renewal Cycle)													
Registration and License Type	Costs	Applicants Per Year	Years Ongoing*										Total
			1	2	3	4	5	6	7	8	9	10	
Out-of-State Institutions Initial Registration	\$812	Various	5	5	5	5	5	5	5	5	5	5	50
		Sub-total:	\$4,060	\$4,182	\$4,307	\$4,436	\$4,570	\$4,707	\$4,848	\$4,993	\$5,143	\$5,297	\$46,543
Out-of-State Institutions Renewal Registration	\$812	Various	44	44	-	-	-	49	49	5	5	5	201
		Sub-total:	\$35,728	\$36,800	-	-	-	\$41,419	\$42,661	\$4,993	\$5,143	\$5,297	\$172,041
		<b>Total Costs:</b>	<b>\$39,788</b>	<b>\$40,982</b>	<b>\$4,307</b>	<b>\$4,436</b>	<b>\$4,570</b>	<b>\$46,125</b>	<b>\$47,509</b>	<b>\$9,987</b>	<b>\$10,286</b>	<b>\$10,595</b>	<b>\$218,585</b>

\*3 Percent Cost Growth Per Year Ongoing

Note: Costs do not include Student Tuition Recovery Fund costs because these costs would be incurred regardless of this proposal

**Projected Expenditure (Savings):** The projected reduction in workload and costs ranges from approximately \$9,413 to \$62,509 per year and up to \$336,122 over a ten-year period as follows:

Bureau for Private Postsecondary Education Out-of-State Institution Registration - Fiscal Impact (Cost Savings)												
Initial and Renewal Registration Biennial vs. Five-Year Cycle	Years Ongoing										Total	
	1	2	3	4	5	6	7	8	9	10		
Current: Biennial Renewal Cycle	\$39,788	\$40,982	\$46,518	\$47,914	\$53,921	\$55,539	\$62,053	\$63,914	\$70,975	\$73,104	\$554,706	
Proposed: 5-Year Renewal Cycle	\$39,788	\$40,982	\$4,307	\$4,436	\$4,570	\$46,125	\$47,509	\$9,987	\$10,286	\$10,595	\$218,585	
<b>Total Costs (Savings):</b>	-	-	(\$42,211)	(\$43,477)	(\$49,351)	(\$9,413)	(\$14,544)	(\$53,928)	(\$60,688)	(\$62,509)	(\$336,122)	

\*3 Percent Cost Growth Per Year Ongoing

Note: Costs do not include Student Tuition Recovery Fund costs because these costs would be incurred regardless of this proposal

The Bureau notes, workload and costs of approximately \$1,875 per year or \$9,400 over the five-year renewal cycle related to issuing and processing Student Tuition Recovery Fund (STRF) forms and revenue collection are not included in the expenditure analysis (above) because any STRF workload and costs would be incurred by the Bureau regardless of the proposed regulations.

However, STRF costs are included in the initial and renewal registration fee costs analysis. The Bureau further notes, the total costs of approximately \$10,200 to register out-of-state institutions and to administer the STRF is significantly greater than the \$1,500 fee amount authorized by current law.

The Bureau may also incur costs related to issuing a conditional approval related to increased monitoring, oversight, and increased Attorney General (AG) activities. The Bureau does not have an estimate of the number of out-of-state institutions possibly issued a conditional approval in the future and therefore does not have total workload or cost estimate at this time.

However, the Bureau estimates monitoring workload costs of approximately \$1,900 per year for each institution registered on a conditional approval status.

In the event the AG is required to issue a writ (or other restrictions) to an out-of-state educational institution, the Bureau estimates costs of \$5,000 per case.

**Revenues (Current vs. Proposed):** The Bureau's current out-of-state registration fee revenues range from approximately \$73,500 to \$103,500 per year and up to \$885,000 over a ten-year period as follows:

Bureau for Private Postsecondary Education Out-of-State Institution Registration - Fiscal Impact (Revenues) Current (Biennial Renewal Cycle)													
Registration Type	Fee Amount	Applicants Per Year	Years Ongoing										
			1	2	3	4	5	6	7	8	9	10	Total
Initial Registration	\$1,500	Various	5	5	5	5	5	5	5	5	5	5	50
		Sub-total:	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$75,000
Renewal Registration (Biennial Renewal)	\$1,500	Various	44	44	49	49	54	54	59	59	64	64	540
		Sub-total:	\$66,000	\$66,000	\$73,500	\$73,500	\$81,000	\$81,000	\$88,500	\$88,500	\$96,000	\$96,000	\$810,000
<b>Total Revenues:</b>			\$73,500	\$73,500	\$81,000	\$81,000	\$88,500	\$88,500	\$96,000	\$96,000	\$103,500	\$103,500	\$885,000

The proposed out-of-state registration fee revenues range from approximately \$7,500 to \$81,000 per year and up to 376,500 over a ten-year period as follows:

Bureau for Private Postsecondary Education Out-of-State Institution Registration - Fiscal Impact (Revenues) Proposed (5-Year Renewal Cycle)													
Registration Type	Fee Amount	Applicants Per Year	Years Ongoing										
			1	2	3	4	5	6	7	8	9	10	Total
Initial Registration	\$1,500	Various	5	5	5	5	5	5	5	5	5	5	50
		Sub-total:	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$7,500	\$75,000
Renewal Registration (5-Year Cycle)	\$1,500	Various	44	44	-	-	-	49	49	5	5	5	201
		Sub-total:	\$66,000	\$66,000	\$0	\$0	\$0	\$73,500	\$73,500	\$7,500	\$7,500	\$7,500	\$301,500
<b>Total Revenues:</b>			\$73,500	\$73,500	\$7,500	\$7,500	\$7,500	\$81,000	\$81,000	\$15,000	\$15,000	\$15,000	\$376,500

**Projected Revenue (Loss):** The projected reduction in revenues ranges from approximately \$7,500 to \$88,500 per year and up to \$508,500 over a ten-year period as follows:

Bureau for Private Postsecondary Education Out-of-State Institution Registration - Fiscal Impact (Revenue Loss)											
Initial and Renewal Registration Biennial vs. 5-Year Cycle	Years Ongoing										
	1	2	3	4	5	6	7	8	9	10	Total
Current: Biennial Renewal Cycle	\$73,500	\$73,500	\$81,000	\$81,000	\$88,500	\$88,500	\$96,000	\$96,000	\$103,500	\$103,500	\$885,000
Proposed: 5-Year Renewal Cycle	\$73,500	\$73,500	\$7,500	\$7,500	\$7,500	\$81,000	\$81,000	\$15,000	\$15,000	\$15,000	\$376,500
<b>Total Revenues (Loss):</b>	-	-	(\$73,500)	(\$73,500)	(\$81,000)	(\$7,500)	(\$15,000)	(\$81,000)	(\$88,500)	(\$88,500)	(\$508,500)

The proposed regulations do not result in costs or savings in federal funding.