

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

Notice of Regulatory Action Concerning

**CALIFORNIA CODE OF REGULATIONS
TITLE 5. Education
DIVISION 7.5. Private Postsecondary Education
CHAPTER 2. Applications
Sections 71396 and 71397**

Registration and Re-Registration of Out-of-State Institutions

NOTICE IS HEREBY GIVEN that the Bureau for Private Postsecondary Education (hereinafter "Bureau"), Department of Consumer Affairs, is proposing to take the action described in the Informative Digest. The Board has not scheduled a public hearing on this proposed action. However, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under Contact Person in this Notice.

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office no later than **Tuesday, December 27, 2022**, or must be received by the Bureau at the hearing, if one is held. The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text.

With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE CITATION

Authority cited: Sections 94801.5 and 94877 of the Education Code.

Reference: Section 94801.5, 94850.5, 94909(a), 94911(b), 94923, 94924, and 94930.5 of the Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Private Postsecondary Education Act of 2009 (Act) at Chapter 8 (commencing with Section 94800) of Part 59 of Division 10 of Title 3 of the Education Code requires all private postsecondary educational institutions to be approved or

otherwise exempt in order to legally operate in California. The Act also specifies that out-of-state private postsecondary institutions register with Bureau at set intervals and provide the Bureau with specified information. AB 1344, which went into effect on July 1, 2022, amends the registration requirement for out-of-state institutions to require the institution to provide the Bureau with information on adverse legal actions taken against the institution, its legal predecessor, or a controlling agent, in another jurisdiction. AB 1344 directs the Bureau to develop a registration form through emergency regulations effective on and after July 1, 2021, to collect this new information, and that the emergency regulations should become law through the regular rulemaking process by January 1, 2022. However, due to a drafting irregularity, the Office of Administrative Law issued an opinion that emergency regulations are not possible. Therefore, the Bureau is seeking to implement the regulatory requirements of AB 1344 through the regular rulemaking process.

AB 1344 also provided the Bureau with reasonable discretion in considering out-of-state applications: “When considering whether to approve, deny, or condition initial registration based upon the information provided by an institution pursuant to paragraph (1), the bureau shall . . . [¶] Not consider any individual submission made under paragraph (1) to be solely determinative of the institution’s eligibility for registration 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).” (Ed. Code, § 94801.5, subd. (a)(2), (a)(2)(A).)

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. 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.

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 a decision to approve, conditionally approve, or deny 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.

The Bureau is proposing the following changes:

Amend section 71396 of Division 7.5 of Title 5 of the California Code of Regulations to change the form incorporated by reference from “rev. 1/17” to “rev. 8/22.” This will incorporate by reference the newly revised form with the changes below.

Revise the Application for Registration or Re-Registration of Out-of-State Institutions.

The proposal makes substantive and cosmetic changes to the Application for Registration or Re-registration of Out-of-State Institutions. The substantive changes include:

- Providing a more detailed explanation for what is meant by an “affiliated institution” in Section 4;
- Asking the institution to submit its Financial Responsibility Composite Scores for the past five years, if applicable, and to document any dates that they were placed on Heightened Cash Monitoring by the U.S. Department of Education;
- Asking the institution to submit documents showing the mandated STRF disclosures to California students if they do not use enrollment agreements, and asking for copies of their required STRF records for the past five years or to submit a copy of a spreadsheet formatted to collect the information if the application is new;
- Asking if the institution had its authorization revoked or suspended, or has been the subject of an enforcement action by a state or the federal government entity 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 or re-registration application; if yes, asking the institution to provide the bureau a statement describing the relevant actions and any remediation efforts undertaken by the institution.
- Asking if 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, 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 or re-registration application; if yes, asking the institution to submit a copy of the operative complaint.
- Asking if the institution is currently on probation, show cause, or subject to other adverse action, or the equivalent thereof, by its institutional accreditor or by a programmatic accreditor, or has the institution had its accreditation revoked or suspended within the five years prior to submitting the registration or re-registration application; if yes, asking the institution to provide a statement describing the relevant action and providing an explanation of the facts and circumstances surrounding the action and any remediation efforts undertaken by the institution.
- Asking if the institution, within five years prior to submitting the registration or re-registration application, 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); if yes, asking the institution to provide a copy of the complaint and a copy of the judgment or settlement agreement, if applicable.

- Asking if the institution currently contracts with any third parties for advertising, recruiting, instruction, or student services activities which, to their knowledge, within the past five years, 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, asking for a copy of the contract and a statement listing the case name, case number, and court or jurisdiction where the civil complaint was filed.
- Asking the institution to document the number of known borrower defense claims by the institution's students filled with the Department of Education for each of the most recent five years available;
- Asking the institution to indicate whether the applicant or any person in control of the institution has ever been convicted of a crime substantially related to the operation of an institution of higher education. If yes, asking the institution, subject to enumerated exceptions, to provide the Bureau with a statement listing the name and title of the individual, and the details regarding any criminal conviction.
- Asking the institution to attach copies of the policies and procedures under which a student may withdraw from or cancel enrollment, and the institution's policy for refunds.

Amend section 71397 of Division 7.5 of Title 5 of the California Code of Regulations to state the Bureau may approve, deny, or conditionally approve an application for registration, to specify criteria for the Bureau to use in making its decision to approve, grant conditional approval, or deny an application, and to specify the process to be followed by institutions wishing to appeal the Bureau's decision.

The broad objective of the proposed rulemaking is to make the current regulations consistent with AB 1344's changes to the California Private Postsecondary Education Act of 2009 regarding out-of-state institution registration (Section 94801.5 of the Code), including changing the registration form and processing the new information to be reported on the out-of-state institution's history.

Anticipated Benefits of Proposal

The specific benefit anticipated from the regulation is to make it easier for out-of-state institutions to comply with the disclosure requirements adopted by AB 1344, which

would give the Bureau greater knowledge of an out-of-state institution's regulatory history in other states, making the Bureau's compliance procedures more efficient and effective.

Consistency and Compatibility with Existing State Regulations

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

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 the state's renewal registration workload costs and revenues. However, the provisions related to conditional approval, including increased reporting 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 \$39,788 to \$73,104 per year and up to \$554,706 over a ten-year period.

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.

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.

The Bureau notes, workload and costs of approximately \$1,875 per year or \$9,400 over the five-year renewal cycle (see underlying data) 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 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.

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.

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.

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

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Section 17561 -17630 Require Reimbursement: None

Business Impact: The regulations impact out-of-state educational institutions providing distance learning to California students and do not result in an economic impact on businesses in the state.

Cost Impact on Private Person or Business: The regulatory proposal may impact individual students in California who want to enroll in an out-of-state institution if that institution is conditionally approved with a limitation on the number of California students it can enroll, and the student is unable to enroll and pay tuition fees at the institution as a result.

The regulatory proposal may also impact a representative business attempting reasonable compliance with this regulatory proposal because the institution would be subject to an enrollment limitation, reducing the institution's revenue. However, it is not possible to estimate the size of this economic cost as it is unknown how many students would be affected by an enrollment cap at an institution that is conditionally approved, and it is not possible to estimate the size of the impact on a particular student.

The regulations do not result in an economic impact to businesses in the state.

Effect on Housing Costs: None

Business Reporting:

This regulation requires businesses to fill out an application that requires disclosure of information to the Bureau for assessment. The Bureau finds it is necessary that this disclosure of information apply to businesses for the welfare of the people of California because it will give the Bureau greater knowledge of an out-of-state institution's regulatory history in other states, helping the Bureau protect California students by preventing fraud or unfair practices.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Bureau has determined that this regulatory proposal will not have an impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the state of California. The regulation only applies to private postsecondary institutions located outside of California.

Effect on Small Business:

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

Economic Impact Declaration

The Bureau for Private Postsecondary Education declares that this regulation proposal will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Benefits to Health and Welfare of California Residents, Worker Safety, and the State's Environment

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. This proposal does not benefit worker safety or the State's environment, because it is not related to worker safety or the State's environment.

CONSIDERATION OF ALTERNATIVES

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

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

INITIAL STATEMENT OF REASONS AND INFORMATION

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

TEXT OF PROPOSAL

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

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

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

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

CONTACT PERSON

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

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The backup contact person is:

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Website Access <http://bppe.ca.gov>: Materials regarding this proposal can be found at <http://bppe.ca.gov/lawsregs/current.shtml>. An archive of the Bureau's prior regulatory actions can be found at <http://bppe.ca.gov/lawsregs/archive.shtml>.