

**BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Hearing Date: July 12, 2016

Subject Matter of Proposed Regulations: Prioritization of Complaints and Compliance Inspections

Three (3) Sections Affected: Division 7.5 of Title 5 of the California Code of Regulations: Amend sections 75200 and 75210, and adopt section 75300.

General Purpose of adoption, amendment, or repeal:

The Bureau for Private Postsecondary Education (Bureau) regulates non-exempt private postsecondary educational institutions pursuant to statute and regulations. The purpose of the proposed language is to implement sections of The California Private Postsecondary Education Act of 2009 (Act) added or amended by Senate Bill (SB) 1247, Chapter 840 Statutes of 2014, which went into effect on January 1, 2015. The Act provides that the Bureau, as part of its regulatory duties, perform announced and unannounced compliance inspections every five years. Furthermore, the Act provides that an individual who has cause to believe that an institution has violated the Act or regulations may file a complaint with the Bureau against an institution. The Act requires the Bureau establish priorities for both complaints and compliance inspections and includes a list of risk factors and priority categories that the Bureau is to consider in addition to other known factors in determining what is of highest priority.

Specific Changes, Purpose, Factual Basis/Rationale:

The changes proposed by this regulatory package are as follows:

(1) Amend Section 75200 of Division 7.5 of Title 5 of the California Code of Regulations:

Section 75200(a): This deletes the following subsection: “As part of the Bureau’s compliance program, the first inspection of an institution pursuant to this section shall be an announced inspection.”

Proposed Change: The entire subsection is deleted.

Problem/Factual Basis/Rationale: Providing that the first compliance inspection is an announced inspection can come into conflict with the new requirements created by SB 1247 that “student protections are the highest priority of inspections.” Given the enhanced risk factors and new prioritization, it is possible that an institution could trigger the need for an immediate inspection. Since under the regulations announced inspections require at least a 7-day notice to the institution, this would delay the needed immediate inspection. However, unannounced inspections can be immediate and do not require advanced notice. Additionally, there is no

legislative requirement that the first inspection be announced. Removing the requirement from the regulations removes the potential conflict between student protections and first inspections being announced, and thus removes the problem.

Anticipated Benefits: This primarily benefits students as it allows for immediate compliance inspections when risk factors indicate the necessity. Immediate inspection allows the Bureau to begin acting against any potential violations of the Act or these regulations more quickly, thereby protecting students as quickly as possible.

Section 75200(b): This re-letters subsection (b) to subsection (a) to maintain the clarity and logic of the regulations.

Section 75200(c): This deletes the following subsection: “An institution shall be subject to the same number of unannounced inspections in a two year period as announced inspections. The relevant two year period shall begin on the date of the first announced inspection.”

Proposed Change: The entire subsection is deleted.

Problem/Factual Basis/Rationale: Originally, statutory language provided as did the regulation that an institution be subject to the same or equal number of announced and unannounced inspections. Furthermore, the statute provided that inspections were to occur at least every two years. However, SB 1247 amended these portions of the statute. SB 1247 removed the requirement that an institution have an equal number of announced and unannounced inspections. It also removed the two-year period and replaced it with a five-year period. While the Bureau could conceivably keep the requirement of an equal number of announced and unannounced inspections without conflicting with the statute in this area, as the statute is now silent, the statute now requires that student protections are the highest priority of inspections. It is possible that given new priorities and a new prioritization system that unannounced, or even immediate, inspections for those institutions considered high risk may be necessary and thereby out number announced inspections. Deleting this subsection removes any potential conflict regarding the number of inspections and the time for conducting them and allows the Bureau to better protect student.

Anticipated Benefit: Students benefit from this as it provides the Bureau with the flexibility to address situations of high risk of harm first, thus allowing the Bureau to intervene more quickly. This flexibility also benefits the Bureau in the performance of its duties to protect students. Previously, if an institution had more unannounced inspections than announced inspections, it could feel secure that a future inspection would likely be announced based on the requirement of an equal number of the two types of inspections, thereby giving the institution time to correct deficiencies only after receiving notice of an upcoming announced compliance inspection. Under the new system, the Bureau will be able to make unannounced inspections of institutions identified as high risk using the new risk factors and prioritization system as often as necessary, and this can serve as a deterrent for institutions to violate the laws as well.

Section 75200(d): This re-letters subsection (d) to subsection (b) and makes several changes to implement sections of SB 1247 by using the mandated risk factors to determine the priority of

compliance inspections as well as the type (announced vs. unannounced, or immediate as necessary) and number of inspections.

Proposed Change: The proposal re-letters subsection (d) to subsection (b). Additionally, it makes the additions of “priority and”, “announced and unannounced”, “and as necessary immediate inspections”, and “the risk factors listed in section 94941(c) of the Code, priority of complaints based on section 73000,” as well as deleting “its” and replacing with “the owner’s” and finally deleting “, number and type of complaints.”

Problem/Factual Basis/Rationale: SB 1247 provides a list of risk factors the Bureau must consider in establishing its priorities for compliance inspections. Current regulations have a list of “relevant factors” to use in determining the number of total compliance inspections for an institution, but those factors are not the same as the priority risk factors listed in statute, thus causing a conflict. The proposed regulations incorporate the statutory risk factors into the current regulations and establish that those factors as well as priority complaints and the previously identified “relevant” factors shall be used in determining the priority and number of announced, unannounced, and immediate inspections. In addition, the wording of one factor (i.e., “history of its approval to operate”) has been changed to “history of the owner’s approval to operate” for clarity as it is a person that maintains an approval to operate, not an institution per se.

Anticipated Benefit: This implements SB 1247 so primarily benefits students by ensuring that the Bureau use the risk factors listed in statute to prioritize compliance inspections of institutions. It also benefits the Bureau by clearly articulating the risk factors that shall determine the priority, number, and type of compliance inspections based on the given factors. This provides the Bureau with a system to identify high risk/high priority institutions for closer monitoring. Ultimately, the students benefit from this new system, as their protection is the highest priority.

Section 75200(e): This re-letters subsection (e) to subsection (c) and changes the time for compliance inspections from “two year” to “five year” period.

Proposed Change: The proposal re-letters subsection (e) to subsection (c). Additionally, it deletes “two year” and replaces it with “five year.” The proposed subsection states that the Bureau is not precluded from conducting an investigation of an institution whether or not it has conducted some or all of its compliance inspections in the five-year period.

Problem/Factual Basis/Rationale: The deletion of several subsections prior to this would leave gaps in the logical order so the proposal re-letters the subsection to (c). Furthermore, SB 1247 changed the time period for the Bureau to conduct compliance inspections from at least every two years to at least every five years so the proposal removes the conflict regarding the time period in the statute as compared with the current two-year period currently referenced in this subsection.

Anticipated Benefit: Everyone benefits by having the regulations maintain a clear and logical flow. Changing the time from two years to five years benefits both the students and the Bureau in removing any conflict and confusion between the statute and the regulations. The subsection itself represents a basic student protection and Bureau enforcement tool by clarifying that the Bureau is not precluded from conducting investigations regardless of the number of already conducted compliance inspections in the five-year period.

(2) Amend Section 75210 of Division 7.5 of Title 5 of the California Code of Regulations:

Section 75210(a): This adds a new subsection that addresses the posting of notices before an announced compliance inspection at an institution.

Proposed Change: The proposal requires that a notice of an upcoming announced compliance inspection, including the text of the notice, be posted in a conspicuous place or places at the institution at least 5 business days before the announced inspection. It also provides that the notice be maintained and unobstructed until the compliance inspection is completed. Furthermore, the institution shall deliver a copy of the notice to students via email or in the same way the students generally receive information from the institution.

Problem/Factual Basis/Rationale: While it is impractical to provide advanced notice of unannounced compliance inspections as it defeats the purpose of an inspection being unannounced, an announced inspection is known to the institution. This would provide notice to students of an upcoming inspection should the students wish to contact the inspector while the inspector is at the institution. Using five business days as a minimum insures that students will have ample time to prepare anything they may wish to discuss with the inspector. It also ensures students that only attend school one day a week will have the opportunity to receive notice as the notice must be posted for five business days, or when school is in session. Without a minimum time period, an institution might not post or notify students until one minute in advance of the announced inspection, which could result in students missing the opportunity to discuss any concerns with the Bureau at the inspection. The notice also provides a reminder of the Bureau's contact information for students who might prefer to contact the Bureau without interacting with the inspector at the institution should the student prefer that the institution not be aware of the student's contact with the Bureau. Not all students visit a campus every week or in the case of distance learning not at all. Therefore, having the institutions provide the notice to students in the same manner as the student generally receives information from the institution balances the notifying students without creating an undue burden on the institution as it will be utilizing a preexisting system to provide the notice.

Anticipated Benefit: The institution and the Bureau are generally the only parties aware that an announced compliance inspection is forthcoming. This will allow other interested stakeholders, particularly students, to know of an upcoming inspection, which provides an opportunity for those stakeholders to provide feedback to the inspector if they desire or by further reminding students that they can contact the Bureau directly by phone or via the Bureau website with any comments, questions, or concerns.

Section 75210(b): The new text adds “/enforcement/inspection_results” to the website listed in the Notice to Students about the results of an institution’s compliance inspections. It also adds the designation of subsection (b) for this subsection. The proposal clarifies that institutions shall allow the Bureau to post Notice(s) following a compliance inspection.

Proposed Change: The proposal adds the specific website location “/enforcement/inspection_results” to the Notice posted at institutions at the time of any compliance inspection. Previously, only the Bureau’s home page of its website was listed. This addition takes an interested individual directly to the Compliance Inspections results on the Bureau’s website. Additionally, it letters this portion as subsection (b). The proposal clarifies that institution shall allow the Bureau to post the Notice(s) following the completion of a compliance inspection. Furthermore, the institution shall deliver a copy of the notice to students via email or in the same way the students generally receive information from the institution.

Problem/Factual Basis/Rationale: There was some concern that students might not be able to find exactly where the results of compliance inspections are posted on the Bureau’s website. The proposal gives the specific URL address for the inspection results page. Previously, this language was the entirety of section 75210. New subsections have been added and this subsection with the original language is now subsection (b) as to maintain the logic and clarity of the section. The proposal makes it clear that the institution must allow the Bureau to post in conspicuous places the Notice(s) that inform everyone that a compliance inspection has taken place at that institution. Not all students visit a campus every week or in the case of distance learning not at all. Therefore, having the institutions provide the notice to students via email or in the same manner as the student generally receives information from the institution balances notifying students without creating an undue burden on the institution.

Anticipated Benefit: This makes it clear for students and other interested individuals where the compliance inspection results are located on the Bureau’s website, eliminating the need to search for the given page. It also ensures that the students will benefit by having the Notice(s) posted in noticeable locations at the institution.

Section 75210(c): This adds a new subsection that addresses which languages are to be used for compliance notices.

Proposed Change: The proposal requires that notices regarding compliance inspections be posted in each language that the institution is approved for teaching courses.

Problem/Factual Basis/Rationale: Not all Bureau approved courses are taught in English. English is not the primary language for many students at different institutions. Some students may not be literate in English. Therefore, notices being posted only in English are not an effective way to communicate with these students. Requiring the notices to be posted in the languages used for instruction will ensure that the attending students comprehend the Notice(s).

Anticipated Benefit: The information contained in the compliance notices will be provided in all the different languages in which the institution is approved to teach courses thus effectively reaching and communicating with all the students at the institution.

(3) Adopt Section 75300 of Division 7.5 of Title 5 of the California Code of Regulations:

Section 75300(a) This adds a new section and subsection for complaint prioritization.

Proposed Change: The proposal creates a new section and subsection for complaint prioritization that incorporates all “the priorities set in section 94941(e) of the Code” as well as complaint categories determined by the Bureau to “be high priority when processing complaints.”

Problem/Factual Basis/Rationale: SB 1247 requires that the Bureau adopt regulations to establish categories of complaints or cases that are to be handled on a priority basis. The statute provides a list of categories of allegations that are to be included in the priority categories that the Bureau identifies. The proposal directly incorporates the statutory conditions into the complaint prioritization regulations. This helps create a system to set complaint priorities so complaints that are more serious can be handled first.

Anticipated Benefit: Ultimately, this benefits students as prioritization must be done to ensure that the Bureau is using its resources to protect from the greatest threat of harm to the most students. The proposal also benefits the Bureau by providing categories to identify which complaints and cases need immediate attention. The goal is that the Bureau can more readily identify high-risk institutions to protect students.

Section 75300(a)(1) This adds the category “Financial harm to students” to those categories considered to be priorities for complaints.

Section 75300(a)(2) This adds the category “Financial instability of institution” to those categories considered to be priorities for complaints.

Section 75300(a)(3) This adds the category “Breach of enrollment agreement” to those categories considered to be priorities for complaints.

Section 75300(a)(4) This adds the category “Maintenance or condition of facilities and equipment that could lead to harm to the public” to those categories considered to be priorities for complaints.

Section 75300(a)(5) This adds the category “Operation of an institution outside the scope of its approval status” to those categories considered to be priorities for complaints.

Problem/Factual Basis/Rationale: SB 1247 requires the Bureau to adopt regulations to establish categories of complaints or cases that are to be handled on a priority basis. The statute provides some categories but does not limit the priority complaints to just those listed in the statute. The regulations add the above five categories to the priority list as the Bureau has found in its experience that these categories also represent classes which may also result in serious harm to students. “Financial harm to students” is something which directly creates cost damage that a student should not have to undertake. “Financial instability of institution” often results in sudden or unplanned closure of the institution. “Breach of enrollment agreement” is the institution

violating its contract with the student, which invariably significantly damages the student. “Maintenance or condition of facilities and equipment that could lead to harm to the public” are conditions that endanger the students, the public, everyone and require immediate action to correct or at minimum remove the danger. “Operation of an institution outside the scope of its approval status” at minimum is an approved institution teaching an unapproved program (one which not has been reviewed by the Bureau to ensure that it meets the minimum required standards) to the maximum of the operation of an unapproved institution, which is an institution operating without any oversight. All of these have resulted in serious harm and damage to students and even members of the public. Complaints in these categories require immediate action and therefore would be placed in the highest priority level to provide the highest level of protection possible.

Anticipated Benefit: The entirety of the priority system is to benefit students. The given categories can both result in significant harm to students or may be indicators of larger issues that likewise can result in harm to students. Through recognizing these categories as high priority when handling complaints, the Bureau will be in a better position to stop or minimize the harm done to not only the student who might make a complaint, but also other students at the institution.

Underlying Data

None

Business Impact

This regulation will not have a significant adverse economic impact on businesses. This is an internal process for the Bureau. The regulations lay out the risk factors for prioritizing the handling of complaints and compliance inspections. While some institutions may receive more inspections based on the risk factors, such heightened monitoring would be based on risk factors that indicate a need for such monitoring.

Economic Impact Assessment

The regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because the prioritization and risk factors are related to internal operations of the Bureau. The proposal reflects the foundation of a new prioritization system to handle complaints and compliance inspections based on risk factors and categories of allegations set out in both the statute and the regulations.
- It will not create new businesses or eliminate existing businesses within the State of California because the prioritization and risk factors are related to internal operations of the Bureau. If the Bureau conducts compliance inspections or investigates an institution because of the new prioritization system that would simply be a reflection of the institution having an increase of risk factors or complaints.

- It will not affect the expansion of businesses currently doing business within the State of California because the prioritization and risk factors are related to internal operations of the Bureau. The risk factors and complaint categories are assessed to prioritize the handling of complaints as well as heightened monitoring through compliance inspections for institutions with the risk factors.
- The regulatory proposal benefits the health and welfare of California residents by creating a prioritization system for the Bureau to maximize its resources to protect the greatest number of students from the greatest threat of harm. The Bureau will prioritize compliance inspections and respond first to high priority complaints thus bolstering the monitoring of institutions that are considered high risk to protect California residents.
- The regulatory proposal does not affect the state's environment because these are regulations to provide a foundation for prioritizing complaints and compliance inspections of approved private postsecondary educational institutions.
- The regulatory proposal would enhance worker safety because these regulations would elevate complaints regarding maintenance and condition of the facilities and equipment of the institutions thereby having the complaint acted upon more quickly and removing hazards to worker safety and the public.

Specific Technologies or Equipment

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

Considerations of Alternatives

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

Set forth below are the alternatives that were considered and the reasons each alternative was rejected:

One alternative is to do nothing. However, if the Bureau did not adopt and amend regulations in this area, the regulations and statute would be out of sync. The amended statute changes inspection requirements to a five year cycle, while the current regulations are set to a two year cycle. Furthermore, the amended statute provides a list of risk factors, but allows for additional factors to be added. The Bureau is aware of other factors which could pose significant harm to students which are not included in the statute. Additionally, the Bureau would be remiss in its duty as the statute requires the Bureau to adopt regulations related to prioritizing complaints and compliance investigations.

Other alternatives that were considered and rejected:

1. Notices should be provided to recently graduated students. The Bureau rejected providing the notices to recently graduated students as being irrelevant to the purpose of the notices (i.e., to notify currently enrolled students of an impending announced inspection or the results of the inspection).
2. Notices should be provided in the student's preferred language. The Bureau proposed that the notices should be provided to students in the languages that the school is approved to teach courses in, and rejected this alternative as it is neither more effective in carrying out the purpose of the notices nor less burdensome and equally effective.
3. Notices should contain information regarding student rights, including refund rights, and should provide referral information for legal aid organizations. The Bureau rejected this alternative as it is irrelevant to the purpose of the notices, and other provisions of law or regulations address disclosure of refund rights.
4. The Bureau should require that institutions report each non-English language used for enrollment agreements and the number of students who complete enrollment agreements in each of these languages. The Bureau rejected this alternative, as it is irrelevant to the purpose of the notices.