



# MEMORANDUM

<b>DATE</b>	April 28, 2023
<b>TO</b>	Interested Parties
<b>FROM</b>	Bureau for Private Postsecondary Education
<b>SUBJECT</b>	<b>Recent Law Changes Impacting Out-of-State Institutions Enrolling California Students</b>

Recent statutory changes affect out-of-state institutions without a physical presence in California that offer distance education to California students for an institutional charge. This memo focuses primarily on laws and regulations newly effective between July 1, 2022 and February 10, 2023. The table below outlines key terms and changes, with relevant laws and references further below.

Institutions are strongly encouraged to review the information in this memo and the relevant statutes and regulations closely to ensure compliance. Institutions may also visit the [Legislation and Regulations](#) section of the Bureau’s website for updated information regarding current and future law changes. Questions about this memo may be sent to [bppe.policy@dca.ca.gov](mailto:bppe.policy@dca.ca.gov).

<b>Issue</b>	<b>Description</b>
<b>Applicability of Registration Requirements</b>	<p>With the exception of degree-granting public and accredited nonprofit institutions, private postsecondary institutions without a physical presence in California must register with the Bureau prior to enrolling California students. Senate Bill (SB) 1433 (Roth, Chapter 544, Statutes of 2022) exempted from registration requirements non-degree-granting institutions that charge no more than \$2,500 for any educational program and at which students do not use government financial aid to pay for total charges.</p> <p>Relevant sections:            “An out-of-state private postsecondary educational institution shall register with the bureau...”. (California Education Code (CEC) section 94801.5(a))            “This section does not apply to a higher education institution that grants undergraduate degrees, graduate degrees, or both, and that is either formed as a nonprofit corporation and is accredited by an agency recognized by the United States Department of Education, or is a public institution of higher education.” (CEC section 94801.5(c)(1))</p>

	<p>“This section does not apply to a higher education institution that does not award degrees and that solely provides educational programs for total charges of two thousand five hundred dollars (\$2,500) or less when no part of the total charges is paid from state or federal student financial aid programs.” (CEC section 94801.5(c)(2))</p>
<b>Registration Length</b>	<p>Pursuant to CEC section 94801.5(e), effective July 1, 2022, the registration of an out-of-state institution is valid for five years.</p>
<b>Registration Cost</b>	<p>The cost for filing a registration application is \$1,500 (CEC section 94930.5(e)(1)).</p>
<b>Information Required for Registration</b>	<p>Institutions subject to registration requirements must complete an application for registration, available on the Bureau’s <a href="#">Applications</a> webpage, pursuant to Title 5, California Code of Regulations (CCR) section 71396. This application has been revised to comply with changes to CEC section 94801.5 stemming from both Assembly Bill (AB) 1344 (Bauer-Kahan, Chapter 520, Statutes of 2019) and SB 1433.</p> <p>Effective February 10, 2023, the revised application requires an institution provide evidence of institutional accreditation, evidence of state authorization in its home state, the agent for service of process, and a copy of specified student-facing documents. It additionally requires information about the institution’s history with federal and state regulatory agencies, accrediting agencies, and consumer protection complaints.</p> <p>Effective with the revised form, institutions that do not have information to report in any specified field (e.g., an unaccredited institution that cannot provide evidence of accreditation) need not complete portions of the application that are irrelevant to it.</p> <p>Based on the information submitted, and the Bureau’s assessment of risk posed to Californians by the institution enrolling California students, the Bureau may approve, deny, or place conditions upon registered institutions. Conditions placed upon the approval of an application may 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. The adjudication process and standards are outlined in Title 5, CCR section 71397.</p>

**Compliance Standards for Registered Institutions**

Institutions subject to registration requirements must only enroll California students after obtaining a valid registration and according to any conditions placed upon that registration.

Pursuant to CEC section 94801.5(a)(4) and (5), institutions must comply with Student Tuition Recovery Fund (STRF) requirements for their California resident students. This includes submitting quarterly STRF assessments to the Bureau, for the purpose of providing financial protection for California residents in case of institution or program closure, and providing disclosures regarding STRF to California students.

As modified by AB 1344, registered institutions must, pursuant to CEC section 94801.5(a)(3), notify the Bureau within 30 days of certain actions taken by government regulators or accrediting agencies and specified situations related to consumer protection or other concerns. Upon receipt of such notices, the Bureau will engage with both the institution and the Attorney General's Office, as required by statute, regarding the risk posed to California consumers and the institution's continued registration. For more regarding this process and the conditions under which the Bureau may revoke an institution's registration, see CEC section 94801.5(b). Required notices may be sent to [bppe.notice@dca.ca.gov](mailto:bppe.notice@dca.ca.gov).

As established by SB 1433, which enacted CEC section 94801.7, institutions subject to registration requirements must adhere to the prohibited business practices articulated in the Act (CEC section 94897). The full text of CEC section 94897 is included at the end of this memo.

**Consequences of Noncompliance**

Pursuant to CEC section 94801.5(d), "An institution described in subdivision (a) that fails to comply with this section is not authorized to operate in this state. Any institution whose registration is denied or revoked is authorized to reapply for registration after 12 months have elapsed from the date of the denial or revocation of registration."

Pursuant to CEC section 94917, as amended by SB 1433, if an out-of-state institution subject to registration requirements does not hold a valid registration with the Bureau, debt financing agreements "relating to payment for an educational program" are "void and not enforceable."

### **Key Legislative History**

- Assembly Bill 48 (Portantino, Chapter 310, Statutes of 2009), effective January 1, 2010, establishes the California Private Postsecondary Education Act of 2009 (Act) which empowers the Bureau for Private Postsecondary Education to regulate private postsecondary institutions operating in California
- Senate Bill 1192 (Hill, Chapter 593, Statutes of 2016), effective January 1, 2017, requires out-of-state private postsecondary institutions enrolling California students to register with the Bureau and comply with state Student Tuition Recovery Fund requirements.
- Assembly Bill 1344 (Bauer-Kahan, Chapter 520, Statutes of 2019), effective July 1, 2022, modifies the out-of-state institution registration process, including granting the Bureau the authority to deny or place conditions upon an institution's registration and incorporating ongoing notice requirements for registered institutions.
- Senate Bill 1433 (Roth, Chapter 544, Statutes of 2022), effective January 1, 2023, prohibits registered institutions from engaging in specified business practices and requires institutions to hold valid registrations before incurring debt on behalf of students.

### **Selected References**

#### **CEC section 94850.5. Out-of-State Private Postsecondary Educational Institution**

“Out-of-state private postsecondary educational institution” means a private entity without a physical presence in this state that offers distance education to California students for an institutional charge, regardless of whether the institution has affiliated institutions or institutional locations in California.

**CEC section 94869.** “To operate” means to establish, keep, or maintain any facility or location in this state where, or from which, or through which, postsecondary educational programs are provided, or to enroll California residents in postsecondary educational programs in an institution based outside of the state via distance education.

#### **CEC section 94801.5. Out-of-State Institution Registration**

(a) An out-of-state private postsecondary educational institution shall register with the bureau, pay a fee pursuant to Section 94930.5, and comply with all of the following:

(1) 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).

(A) Evidence of institutional accreditation.

(B) Evidence that the institution is approved to operate in the state where the institution maintains its main administrative location.

(C) The agent for service of process consistent with Section 94943.5.

(D) A copy of the institution's catalog and, if the institution uses enrollment agreements, a copy of a sample enrollment agreement.

(E) 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.

(F) 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 before submitting the registration. If so, the institution shall provide the bureau a copy of the operative complaint with the registration.

(G) 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 before submitting the registration.

(H) Whether or not the institution, within five years before 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.

(I) Any additional documentation the bureau deems necessary for consideration in the registration process.

(2) 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 do all of the following:

(A) 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).

(B) Provide an institution with reasonable notice and opportunity to comment before the bureau regarding any determination to deny, condition, or reject initial registration before that determination becomes final. After the determination becomes final, the institution may seek review of the bureau's decision through an action brought pursuant to Section 1085 of the Code of Civil Procedure.

(C) Require 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 agreement shall be signed by a responsible officer of the institution.

(3) An institution that is registered with the bureau and enrolls a student residing in California shall report in writing to the bureau, within 30 days, the occurrence of any of the following:

(A) The institution has its authorization or approval revoked or suspended by a state or by the federal government, or has been 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.

(B) 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 is subject to any education, consumer protection, unfair business practice, fraud, or related enforcement action by a state or federal agency. If so, the institution shall provide the bureau a copy of the operative complaint.

(C) The institution is currently on probation, show cause, or subject to other adverse action, or the equivalent thereof, by its accreditor or the accreditation of the institution is revoked or suspended.

(D) The institution settles, or is 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 to 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 subdivision (b), all material terms and aspects of the settlement, including, for example, whether a student plaintiff remained enrolled or reenrolled at the institution.

(4) The requirements of the Student Tuition Recovery Fund, established in Article 14 (commencing with Section 94923), and regulations adopted by the bureau related to the fund, for its students residing in California.

(5) The institution shall provide disclosures pursuant to the requirements for the Student Tuition Recovery Fund, established in Article 14 (commencing with Section 94923), and regulations adopted by the bureau related to the fund, for its students residing in California.

(b) (1) Upon receipt of any of the notifications in paragraph (3) of subdivision (a), the bureau shall, within 30 days of receiving the notice, request the institution to explain in writing why the institution should be permitted to continue to enroll California residents. If the bureau, after reviewing the information submitted in response to the request and after consultation with the Attorney General, issues a written finding that there is no immediate risk to California residents from the institution continuing to enroll new students, the institution shall be permitted, pending completion of a review by the bureau, to continue to enroll new students or the bureau may, in its discretion, limit enrollments.

(2) Any institution under review pursuant to paragraph (1) may have its registration revoked by the bureau if, after further review, the bureau issues a written finding that there is a substantial risk posed to California residents by the institution continuing to enroll California residents.

(3) An institution shall have the right to reasonable notice and opportunity to comment to and before the bureau regarding any determination to revoke registration or to limit enrollment before that determination becomes final. An institution may seek review of a bureau order limiting new student enrollment or revoking registration under this subdivision through an action brought pursuant to Section 1085 of the Code of Civil Procedure.

(4) Nothing in this subdivision shall be construed as preventing the bureau from revoking an institution's registration on any other grounds specified in this chapter. Nothing in this section shall be construed as prohibiting or impairing the ability of an institution registered pursuant to this section or eligible to register pursuant to this section from applying to be an approved institution pursuant to this chapter.

(c) (1) This section does not apply to a higher education institution that grants undergraduate degrees, graduate degrees, or both, and that is either formed as a nonprofit corporation and is accredited by an agency recognized by the United States Department of Education, or is a public institution of higher education.

(2) This section does not apply to a higher education institution that does not award degrees and that solely provides educational programs for total charges of two thousand five hundred dollars (\$2,500) or less when no part of the total charges is paid from state or federal student financial aid programs. The bureau may adjust this charge threshold based upon the California Consumer Price Index and post notification of the adjusted charge

threshold on its internet website as the bureau determines, through the promulgation of regulations, that the adjustment is consistent with the intent of this chapter.

(d) An institution described in subdivision (a) that fails to comply with this section is not authorized to operate in this state. Any institution whose registration is denied or revoked is authorized to reapply for registration after 12 months have elapsed from the date of the denial or revocation of registration.

(e) A registration with the bureau pursuant to this section shall be valid for five years.

(f) The bureau shall develop through emergency regulations effective on and after July 1, 2021, a registration form. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare for purposes of Sections 11346.1 and 11349.6 of the Government Code. These emergency regulations shall become law through the regular rulemaking process by January 1, 2022.

(g) The bureau shall disclose on its internet website a list of institutions registered pursuant to this section through reasonable means and disclose a designated email address for California residents to send a complaint to the bureau about an institution registered pursuant to this section. Complaints received through this email address shall be investigated in the same manner as complaints received by the bureau for institutions approved to operate pursuant to this chapter, but bureau enforcement in response to such complaints against institutions registered pursuant to this section shall be governed by subdivision (b).

(h) This section shall become operative on July 1, 2022.

**CEC section 94897. Prohibited Business Practices**

An institution shall not do any of the following:

(a) Use, or allow the use of, any reproduction or facsimile of the Great Seal of the State of California on a diploma.

(b) Promise or guarantee employment, or otherwise overstate the availability of jobs upon graduation.

(c) Advertise concerning job availability, degree of skill, or length of time required to learn a trade or skill unless the information is accurate and not misleading.

(d) Advertise, or indicate in promotional material, without including the fact that the educational programs are delivered by means of distance education if the educational programs are so delivered.

(e) Advertise, or indicate in promotional material, that the institution is accredited, unless the institution has been accredited by an accrediting agency.



(f) Solicit students for enrollment by causing an advertisement to be published in “help wanted” columns in a magazine, newspaper, or publication, or use “blind” advertising that fails to identify the institution.

(g) Offer to compensate a student to act as an agent of the institution with regard to the solicitation, referral, or recruitment of any person for enrollment in the institution, except that an institution may award a token gift to a student for referring an individual, provided that the gift is not in the form of money, no more than one gift is provided annually to a student, and the gift’s cost is not more than one hundred dollars (\$100).

(h) Pay any consideration to a person to induce that person to sign an enrollment agreement for an educational program.

(i) Use a name in any manner improperly implying any of the following:

(1) The institution is affiliated with any government agency, public or private corporation, agency, or association if it is not, in fact, thus affiliated.

(2) The institution is a public institution.

(3) The institution grants degrees, if the institution does not grant degrees.

(j) In any manner make an untrue or misleading change in, or untrue or misleading statement related to, a test score, grade or record of grades, attendance record, record indicating student completion, placement, employment, salaries, or financial information, including any of the following:

(1) A financial report filed with the bureau.

(2) Information or records relating to the student’s eligibility for student financial aid at the institution.

(3) Any other record or document required by this chapter or by the bureau.

(k) Willfully falsify, destroy, or conceal any document of record while that document of record is required to be maintained by this chapter.

(l) Use the terms “approval,” “approved,” “approval to operate,” or “approved to operate” without stating clearly and conspicuously that approval to operate means compliance with state standards as set forth in this chapter. If the bureau has granted an institution approval to operate, the institution may indicate that the institution is “licensed” or “licensed to operate,” but may not state or imply either of the following:

(1) The institution or its educational programs are endorsed or recommended by the state or by the bureau.

(2) The approval to operate indicates that the institution exceeds minimum state standards as set forth in this chapter.

(m) Direct any individual to perform an act that violates this chapter, to refrain from reporting unlawful conduct to the bureau or another government agency, or to engage in any unfair act to persuade a student not to complain to the bureau or another government agency.

(n) Compensate an employee involved in recruitment, enrollment, admissions, student attendance, or sales of educational materials to students on the basis of a commission, commission draw, bonus, quota, or other similar method related to the recruitment, enrollment, admissions, student attendance, or sales of educational materials to students, except as provided in paragraph (1) or (2):

(1) If the educational program is scheduled to be completed in 90 days or less, the institution shall pay compensation related to a particular student only if that student completes the educational program.

(2) For institutions participating in the federal student financial aid programs, this subdivision shall not prevent the payment of compensation to those involved in recruitment, admissions, or the award of financial aid if those payments are in conformity with federal regulations governing an institution's participation in the federal student financial aid programs.

(o) Require a prospective student to provide personal contact information in order to obtain, from the institution's internet website, educational program information that is required to be contained in the school catalog or any information required pursuant to the consumer information requirements of Title IV of the federal Higher Education Act of 1965, and any amendments thereto.

(p) Offer an associate, baccalaureate, master's, or doctoral degree without disclosing to prospective students before enrollment whether the institution or the degree program is unaccredited and any known limitation of the degree, including, but not limited to, all of the following:

(1) Whether a graduate of the degree program will be eligible to sit for the applicable licensure exam in California and other states.

(2) A statement that reads: "A degree program that is unaccredited or a degree from an unaccredited institution is not recognized for some employment positions, including, but not limited to, positions with the State of California."

(3) That a student enrolled in an unaccredited institution is not eligible for federal financial aid programs.

(q) In any manner commit fraud against, or make a material untrue or misleading statement to, a student or prospective student under the institution's authority or the pretense or appearance of the institution's authority.

(r) Charge or collect any payment for institutional charges that are not authorized by an executed enrollment agreement.

(s) Violate Section 1788.93 of the Civil Code.

(t) Require a prospective, current, or former student or employee to sign a nondisclosure agreement pertaining to their relationship to, or experience with, the institution, except that an institution may use a nondisclosure agreement to protect the institution's intellectual property and trade secrets. Any nondisclosure agreement in violation of this section is void and not enforceable at law or in equity.

(u) Fail to maintain policies related to compliance with this chapter or adhere to the institution's stated policies.

**5 CCR section 71397. Processing of Completed Applications; Appeal of Denials, Conditional Registration and Grounds for Revocation.**

(a) Pursuant to the requirements of section 94801.5 of the Code and this Article, the Bureau will either approve, condition registration upon meeting specified conditions or restrictions ("conditional registration"), or deny an application for registration approval to any applicant.

(1) 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.

(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.

(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 requirements set forth in this Article or Section 94801.5 of the Code.

(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, and

(B) there are no grounds for denial as set forth in this section.

(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).

(b)(1) An applicant denied a registration or re-registration under this Article or issued a conditional registration shall be given written notice of the Bureau's decision to deny or condition registration, the reasons for the decision and the right to request an informal conference in accordance with this section.

(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.

(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).

(c) The applicant may reapply if denied or may, within 30 days of service of the decision to deny, revoke or issue conditional registration, submit a written request to the Bureau for an informal conference with the Bureau Chief or his or her designee. Failure to request an informal conference within 30 days from service of the denial, revocation or conditional registration waives the right to the informal conference.

(d) The Bureau Chief, or his or her designee, shall within 30 days from the Bureau's receipt of a written request for an informal conference, hold an informal conference with the applicant or out-of-state registered institution. The Bureau Chief, for good cause such as scheduling conflicts or medical emergencies, may extend the 30-day period. The informal conference may be by telephone.

(e) Prior to or at the informal conference, the applicant or out-of-state registered institution may submit to the Bureau Chief, or his or her designee, declarations or documents pertinent to the application for registration or re-registration, which shall be duly considered along with any other relevant documentation.

(f) Following the informal conference, the Bureau Chief, or his or her designee, will affirm, modify, or reverse the denial, revocation, or issuance of a conditional registration. A written order affirming, modifying, or reversing the denial, revocation or conditional registration decision shall be served on the applicant within 30 days from the informal conference, unless extended for good cause, including allowing the applicant or out-of-state registered institution to submit, and the Bureau to consider, additional documentation.