

Department of Consumer Affairs
Bureau for Private Postsecondary Education

Initial Statement of Reasons

Hearing Date: August 23, 2010

Subject Matter of Proposed Regulations: Notice to Comply; Surrender of Approval; Stipulations; Suspension, Revocation or Probations of Approval to Operate; Disciplinary Guidelines

Sections Affected:

Adopt sections: 75010, 75100, 75500

Amend sections: 74120 (renumber to 75060), 74130 (renumbered to 75070), 74160 (renumbered to 75080), 74170 (renumbered to 75090)

Introduction

AB 48 enacted the California Private Postsecondary Education Act of 2009 (Act), and reestablished, after a two and one half year absence, regulation of private postsecondary educational institutions in California by the Bureau for Private Postsecondary Education (Bureau). Previously, the Bureau for Private Postsecondary and Vocational Education regulated these institutions. However, the law authorizing the existence of that entity and every statute and regulation related to ensuring the sound operation of these institutions, including all student protections, became inoperative on July 1, 2007, and was repealed as of January 1, 2008.

The Legislature required the Bureau, in Sections 94935 and 94937, to adopt regulations within one year of the enactment of the Act to establish a voluntary informal appeal process for institutions receiving a notice to comply, and for governing placing an institution on probation, or suspending or revoking an approval to operate.

Presently, it is estimated that approximately 400,000 students are enrolled at the various private postsecondary institutions within California. Fees paid by these students are estimated to total over 4.5 billion dollars of private and public funds in order to benefit from the educational programs offered by these institutions. The sources of funds include personal funds from the students and their families, private loans issued by private lending institutions, loans guaranteed by the state and federal governments, grants issued by the state and federal governments, including rehabilitation grants and veterans grants, private employers paying for employees' education, and numerous other sources, including loans directly from the institutions to the enrolled students. While the legislation adopted in AB 48 provides a framework for protecting this multi-billion dollar investment in these students' education, without these regulations the specific details of what is required and what is and is not permitted will remain undefined, allowing for some institutions to place

these significant funds at risk by failing to provide the services and quality of education that the institutions promise prospective students.

Currently there are approximately 2000 private postsecondary educational institutions regulated by the California Private Postsecondary Education Act of 2009. Without adoption of these regulations, these schools will have no clearly defined process for appealing a notice of compliance, causing confusion and resulting in appeals being handled through the APA, or by the Bureau on a case-by-case basis. Additionally, creating clear disciplinary guidelines to be used by the regulated industry, bureau staff and adjudicating bodies for suspension, probation and revocation will assist in providing consistency in the application of the law which was passed in order to protect students and their and the public's investment of \$4.5 billion annually in these institutions.

Specific Purpose of each adoption or amendment:

Adopt section 75010 (Notice to Comply) – This section is necessary to clarify the use of and procedures for the notice to comply and defines a voluntary, informal process for the appeal of a notice to comply.

Factual Basis/Rational:

The California Private Postsecondary Education Act of 2009 provides that Bureau staff shall issue a notice to comply if minor violations of the Act are detected during an inspection of an institution. This section provides the process for issuing that notice and the process for the institution to appeal the notice or provide an appropriate response to the notice. To satisfy due process, the proposed regulations require the Notice to describe any alleged violation in detail, and direct the institution as to how to correct the violation to make it easier for the institution to know how to comply. The Notice is to be given to a person with some ultimate responsibility for correction or a designee, so that notice is given to the proper person. Although a Notice to Comply is not to be issued for a violation that is corrected in the presence of Bureau staff, the regulations account for the possibility of a Notice being issued for a violation, which is subsequently corrected in the presence of Bureau staff before they leave the institution, to allow a process for withdrawal. The informal office conference with the Director or his or her designee was the most expedient way to finalize the matter, making compliance easier and more likely.

Amend section 74120 (Substantial Relationship Criteria) renumbers this section to 75060

Factual Basis/Rational

Renumbered in order to include the language in a chapter dealing with Enforcement and Discipline, including the notice to comply, rehabilitation criteria, and suspension, revocation, or probation of an Approval to Operate.

Amend section 74130 (Criteria for Rehabilitation) renumbers this section to 75070

Factual Basis/Rational

Renumbered in order to include the language for the notice to comply,

Amend section 74160 (Surrender of Approval) renumbers this section to 75080

Factual Basis/Rational

Renumbered in order to include the language for the notice to comply,

Amend section 74170 (Stipulations) renumbers this section to 75090

Factual Basis/Rational

Renumbered in order to include the language for the notice to comply and in anticipation of regulations for citation and fine.

Adopt 75100 (Suspension, Revocation, or Probation of Approval to Operate) establishes the definition of material violation and establishes that suspension, revocation or probation actions shall take place under the administrative procedures act.

Factual Basis/Rational

It is necessary to have a definition of a material violation and clarity for the process for suspending, revoking or ordering probation for regulated institution.

Adopt 75500 (Disciplinary Guidelines) establishes guidelines for the application of discipline when institutions are found in violation of the law.

Factual Basis/Rational

It is necessary to provide guidelines for discipline in order to provide consistency in the application of discipline for institutions.

Amend Chapter 5 (Student Tuition Recovery Fund) renumbers to Chapter 6

Factual Basis/Rational

Renumbered in order to include the language for the notice to comply

Underlying Data: None

Business Impact:

The Bureau has made an initial determination that the proposed regulatory action may save institutions a significant amount of money by establishing a voluntary, informal appeal process for a notice to comply. The other option is to maintain a process that requires the administrative procedures act, which would add a significant cost when considering the staff time and involvement of other state agencies.

Specific Technologies or Equipment

The California Private Postsecondary Education Act of 2009 does not require specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulations would be either 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 proposed regulations.