

FINDING OF EMERGENCY

Senate Bill 1192 (Statutes of 2016, Chapter 593)(“SB 1192”) requires the Bureau for Private Postsecondary Education (“Bureau”) within the Department of Consumer Affairs to develop a registration form through emergency regulations.

AUTHORITY AND REFERENCE CITATION

Authority cited: Sections 94801.5 and 94877, Education Code.

Reference: Sections 94801.5, 94850.5, and 94930.5, Education Code.

FACTS DEMONSTRATING THE EXISTENCE OF AN EMERGENCY AND THE NEED FOR IMMEDIATE ACTION

SB 1192 mandates that non-exempt “out-of-state private postsecondary institutions,” as defined, that enroll California residents into distance education programs must register with the Bureau “effective July 1, 2017,” and expressly deems the Bureau’s development of a registration form for this purpose an emergency:

“The Bureau shall develop, through emergency regulations, a registration form. The adoption of these regulations shall be deemed 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, 2018.” (Emphasis added; Education Code section 94801.5(e).)

THE NEED FOR THE PROPOSED REGULATION TO EFFECTUATE THE STATUTE BEING IMPLEMENTED, INTERPRETED, OR MADE SPECIFIC AND TO ADDRESS ONLY THE DEMONSTRATED EMERGENCY

The Bureau proposes the regulatory text and application form, which is incorporated by reference, pursuant to a statutory emergency. The regulations are necessary to allow institutions to apply for registration with the Bureau prior to the July 1, 2017, effective date for registration. The form and regulations makes it possible for the Bureau to have a streamlined method to request and collect the required registration fee and all the required information needed to register an out-of-state institution. Since a registration is valid for two (2) years, the form will be used for both initial registration and re-registration upon expiration of a prior registration. The regulations specify that an application that fails to contain all the requested information is “incomplete” and renders an applicant ineligible for registration. For clarity, the regulations state that institutions shall comply with the requirements of the Student Tuition Recovery Fund (STRF) as of July 1, 2017, regardless of any pending processing of the application by the Bureau.

More specifically, the Bureau proposes the following new additions to Title 5 of the California Code of Regulations:

(1) The Bureau proposes to adopt Article 3.5 of Chapter 2, Division 7.5 of Title 5 of the California Code of Regulations and name it “Application for Registration or Re-Registration of Out-of-State Institutions.” It is logical to place the new Article under Chapter 2’s “Applications” category, at the end of the last type of application and before Article 4 relating to the processing of other types of applications.

(2) Section 71396: The Bureau proposes to adopt Section 71396 as part of new Article 3.5 of Chapter 2, Division 7.5 of Title 5 of the California Code of Regulations, and name it “Application Form; Immediate STRF Compliance.” The numbering of the section follows the prior section 71395 and the name identifies the subject matter of the regulatory text.

Section 71396 contains the following subdivisions:

Section 71396(a) – The proposal requires an out-of-state private postsecondary institution seeking registration with the Bureau to submit an application on Form Application 94801.5 (rev. 1/17), which is incorporated by reference and named “Application for Registration or Re-Registration.” The proposal clarifies that the applicant shall submit the completed form, the additional evidence required by statute, and the statutory fee to the Bureau. The Bureau’s creation of an application form is necessary to establish an organized process to obtain information and the fee from applicants seeking registration. The form would be cumbersome and impractical to publish in the California Code of Regulations, so it is incorporated by reference. The Bureau will make the form available on its website and upon request.

The form contains the following:

- **Introduction, List of Items to Include with Application, and Checklist Inquiries:**

The form is named “Application for Registration and Re-Registration of Out-of-State Institutions” in order to identify its purpose. The form references the statutory and regulatory citations under the title to provide applicants with the legal framework and authority for the information, documents, and fee required. The \$1,500.00 non-refundable fee reference is intended to alert the applicant to include the fee with the application.

An introductory paragraph provides a summary of the relevant legal background and legal citations, including (a) the effective date of the law requiring registration, (b) the statutory definition of an “out-of-state private postsecondary educational institution,” (c) the criteria for an exemption to registration, (d) the registration fee, and (e) that registration is only valid for two years. This ensures that applicants are on notice of the basic elements of the law to which the form applies.

The second paragraph lists the following items that must be included with the completed form:

- (1) evidence of accreditation by an accrediting agency recognized by the United States Department of Education;
- (2) evidence of state approval to operate where the institution

maintains its main administrative location; (3) copies of the enrollment agreement and catalog used for California students; and (4) the registration fee. The list of required items to qualify for Bureau registration is included to help prevent incomplete applications from being submitted to the Bureau.

Since a registration is only valid for two years, applicants must apply anew for registration every two years. The applicant is asked whether the application is an initial application for registration or an application for re-registration; and, if the latter, whether the institution has previously complied with the requirements for STRF disclosures and assessments. Having this information will assist the Bureau in determining whether the applicant is re-registering or applying for the first time, and if the applicant is re-registering, the Bureau will be able to review the applicant's prior compliance with STRF disclosures to students and assessments to the Bureau.

- **Section 1 (“OUT-OF-STATE INSTITUTION”):**

The proposal requires an applicant to provide the institution's legal name, business form (sole proprietorship, partnership, limited liability company, or corporation), dba or trade name (if different), main administrative address, telephone number, fax number, and website address. This information will ensure complete identifying information is available to the Bureau in a consistent format and that the required applicant information is provided to enable identification and accuracy in the processing of the application and issuance of the registration.

- **Section 2 (INSTITUTION'S CONTACT PERSON (for this application)):**

The proposal requires the applicant to identify an individual's name, email address, address, phone and fax number for the contact person for the application. This ensures that the Bureau has a point-of-contact at the institution for questions about the application or correspondence related to the application.

- **Section 3 (INSTITUTION'S CALIFORNIA AGENT FOR SERVICE OF PROCESS):**

The proposal requires the applicant to provide the name, address, and telephone number of a California agent for service of process. This provision assures compliance with Education Code section 94801.5, which states, in part: “The institution shall provide the bureau with...[t]he agent for service of process consistent with Section 94943.5 [“An institution shall designate and maintain an agent for service of process within this state, and provide the name, address, and telephone number of the agent to the bureau.”]).

- **Section 4 (AFFILIATED INSTITUTION(S) IN CALIFORNIA (if any)):**

The proposal requires the applicant to identify any affiliated institutions or institutional locations in California, and provide their legal names, business forms, trade names, and contact information. According to the statutory definition of “out-of-state private postsecondary

institution” in Education Code section 94850.5, an out-of-state private postsecondary institution is one that has no physical presence in California itself even if it has “affiliated” institutions or institutional locations in California. An affiliate is clarified in the application as an entity that is related to the out-of-state institution by financial interests or other means of control. This information ensures that the Bureau can properly determine that the applicant meets the statutory definition and will know whether the applicant has any affiliate institutions in California that must be regulated under other provisions of the Bureau’s laws related to institutions with a physical presence in the state.

- **Section 5 (ACCREDITATION):**

The proposal requires the applicant to provide the required verification of accreditation so that the Bureau can evaluate the applicant’s compliance with Education Code section 94801.5, which states, in part: “The institution shall provide the bureau with...evidence of accreditation.” The Education Code defines “accredited” to mean that an institution is accredited by an accrediting agency recognized by the United States Department of Education. (Ed. Code §94813.) Accordingly, this section ensures that the applicant is aware of the requirement that it produce evidence of accreditation from an accreditation agency that is recognized by the United States Department of Education in order to become registered with the Bureau.

- **Section 6 (STATE AUTHORIZATION):**

The proposal requires the applicant to provide the required verification of state authorization so that the Bureau can evaluate compliance with Education Code section 94801.5, which states, in part: “The institution shall provide the bureau with...evidence that the institution is approved to operate in the state where the institution maintains its main administrative location.”

- **Section 7 (CATALOG AND ENROLLMENT AGREEMENT):**

The proposal requires the applicant to provide the Bureau with copies of the institution’s catalog and enrollment agreement for its California students so that the Bureau can evaluate compliance with Education Code section 94801.5, which states, in part: “The institution shall provide the bureau with...[a] copy of the institution’s catalog and sample enrollment agreement.” The Bureau will review the sample enrollment agreement and catalog to ensure that the applicant has included the required STRF disclosures in order to become registered with the Bureau.

- **Section 8 (CERTIFICATION UNDER PENALTY OF PERJURY AND LEGAL NOTICE):**

The proposal includes a certification *under penalty of perjury* that would help ensure that the application contains truthful, factual representations and is made in good faith by the applicant (see, e.g., judicial explanation of the use of certifications in *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223). The Bureau will be better able to meet its obligation to

protect the consumers of California since only an applicant who meets the statutory requirements as demonstrated by their application for registration will be authorized to provide distance education to California students. Creating the application with a certification helps protect the public by helping ensure that only qualified applicants are authorized to operate in California. The proposal also includes a privacy notice that the Bureau is required to provide with any form that collects personal information. This notice ensures that the applicant is aware of the Bureau's practices with respect to collecting personal information pursuant to the Information Practices Act (Civil Code section 1798, et seq.).

Section 71396(b) – The proposal clarifies that an application that fails to contain all the information required by the Article will render the application “incomplete” and the applicant ineligible for registration or re-registration. This is necessary so that applicants are on notice that an application must have all required components to be considered complete and of the consequences for failing to include all the required information.

Section 71396(c) – The proposal clarifies that even if an application for registration is pending with the Bureau as of July 1, 2017, an applicant must still comply with the part of Education Code section 94801.5, which states: “Effective July 1, 2017, an out-of-state private postsecondary institution shall...comply with...the requirements of the Student Recovery Fund...and regulations adopted by the bureau related to the fund...”

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The California Private Postsecondary Act of 2009 (Act) created the current Bureau and provides the Bureau with the authority to regulate non-exempt private postsecondary institutions with a physical presence in California. SB1192, which went into effect January 1, 2017, amends the Act to require that out-of-state private postsecondary institutions, as defined, who enroll California residents through distance learning, must register with the Bureau. Registered institutions must comply with the STRF portion of both the Act and regulations, thereby making the California residents of these institutions eligible for STRF. The amended Act requires that applying institutions provide specific information and evidence to the Bureau in order to be registered, and to pay the required fee. Per statute, effective July 1, 2017, out-of-state institutions that do not register with the Bureau and otherwise comply with the STRF requirements are not authorized to enroll students in California.

Anticipated Benefits of the Proposal

The proposed regulations provide the application form to be used by institutions to register. This will provide a standard method of applying for registration and the necessary guidance for these institutions to provide all required information and fee so that the institutions can register and continue to enroll California residents.

Consistency and Compatibility with Existing State Regulations

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

Fiscal Impacts Estimates

Fiscal impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

Cost: The Bureau anticipates the need to hire two additional Staff Service Analysts to process the registrations and STRF requirements for an estimated 250 institutions per year. The cost of those positions is \$180,000 in 2017-18 and \$164,000 ongoing.

Revenue: The anticipated revenue from the anticipated applications for registration is \$375,000 annually based the \$1500 fee set by statute and an estimation of 250 institutions registering per year.

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 Bureau has determined that there are costs for an institution to become registered. Among these costs is the \$1,500.00 fee, which covers a registration that is valid for two years; the costs of gathering the required materials such as verifications of accreditation and state authorization; the costs of resources in personnel working to complete the application, including providing materials such as the catalog and enrollment agreement. There may also be costs involved in establishing a service of process agent in the state of California. However, all these costs come directly from the statute. The emergency regulations simply provide the mechanism for institutions to meet this new statutory requirement.

Impact on Jobs/New Business:

The Bureau has determined that there are costs for an institution to become registered. A summary of this is listed above. In addition to the requirements coming from statute, the institutions are by definition “out-of-state.” It is possible that such an institution will choose to add a physical location within California since it will be required to register with the Bureau to enroll California residents anyway. Any such impacts are likely to only be nominal.

Cost Impact on Private Person or Business: None

Effect on Housing Costs: None