



MEMORANDUM

DATE	December 11, 2023
TO	Office of Administrative Law Via Kimberly Kirchmeyer, Director, Department of Consumer Affairs
FROM	Deborah Cochrane, Bureau Chief Bureau for Private Postsecondary Education
SUBJECT	Student Tuition Recovery Fund – Rate Setting

The Bureau for Private Postsecondary Education (Bureau), with the agreement of the Director of the Department of Consumer Affairs, will be amending the Student Tuition Recovery Fund (Fund) assessment rate found in Title 5 of the California Code of Regulations (5 CCR) section 76120 effective April 1, 2024. As explained below, this regulation is exempt from traditional rulemaking procedures pursuant to subdivision (g) of Government Code section 11340.9.

Similar to an insurance policy, Fund assessments are imposed on each student enrolled in an approved institution; the funds are collected and pooled in the Fund itself. Students suffering economic losses as a result of the closure of a Bureau-approved institution may then make a claim for reimbursement for those economic losses from the Fund. The Bureau's regulations to award claims from the Fund can be found in 5 CCR §76000 *et seq.*

Education Code section 94925(a) states, "The amount in the Student Tuition Recovery Fund shall not exceed twenty-five million dollars (\$25,000,000) at any time." The STRF assessment rate is currently established in 5 CCR section 76120 at two dollars and fifty cents (\$2.50) per one thousand dollars (\$1,000) of institutional charges, rounded to the nearest thousand dollars. The assessment rate was previously set to zero via a file-and-print submission to the Office of Administrative Law in 2014, raised to fifty cents (\$0.50) on February 8, 2021, and then raised again to two dollars and fifty cents (\$2.50) on April 1, 2022.

The Fund balance as of October 10, 2023 was \$26,028,000. In order to return the Fund balance to a level consistent with Education Code section 94925, the Bureau will be amending the Fund assessment rate from two dollars and fifty cents (\$2.50) per one thousand dollars (\$1,000) of institutional charges to zero dollars (\$0.00) per one thousand dollars (\$1,000) of institutional charges. Regulatory language reflective of this change, which will go into effect April 1, 2024, is attached.

Government Code section 11340.9 provides the administrative regulation and rulemaking provisions (chapter 3.5) of the Administrative Procedure Act (APA) do not apply to “[a] regulation that establishes or fixes rates, prices, or tariffs.” (Gov’t Code §11340.9 (g).) Much as the insurance rate regulations at issue in *20th Century Insurance Co. et al v. Garamendi*, 5 CCR section 76120 fixes a STRF assessment rate, which is exempt from the APA rulemaking process. (*20th Century Insurance Co. et al v. Garamendi*, (1994) 8 Cal.4th 216, 248.)

Prior to amending the assessment rate, on November 8, 2023, the Bureau called a noticed, public meeting of its Advisory Committee and presented the proposed regulatory change to the members and the public. No adverse comments were received.

This rulemaking is submitted to the Office of Administrative Law pursuant to Government Code §11343.8.