

TITLE 5. BUREAU FOR PRIVATE POSTSECONDARY EDUCATION DEPARTMENT OF CONSUMER AFFAIRS

NOTICE IS HEREBY GIVEN that the Bureau for Private Postsecondary Education (hereinafter “Bureau”), Department of Consumer Affairs, is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, 1625 N. Market Blvd., Sacramento, CA 95834, at 10am, or as soon as practicable thereafter, on July 14, 2016. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on July 14, 2016, or must be received by the Bureau at the hearing. The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 94877, 94923, and 94924 of the Education Code, and to implement, interpret or make specific Sections 94843, 94844, 94870, 94874, 94874.1, 94911, 94923, 94924, 94925, 94926, 94927, and 94927.5 of said Code, the Bureau is considering changes to Division 7.5 of Title 5 of the California Code of regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

SB1247, Chapter 840, Statutes of 2014 (SB 1247), made fundamental changes to the Student Tuition Recovery Fund (STRF or Fund) provisions in the Private Postsecondary Education Act of 2009 (the Act). This rulemaking action provides for increased eligibility for making a STRF claim, including for claims made by students whose charges were paid by a third-party payer and for claims in which proof of payment of the STRF assessment cannot be established. It makes changes to definitions to reflect the changes made by SB 1247 and removes some sections that are now incorporated into the statute or for consistency with SB 1247. Additionally, it provides clarification on: (1) STRF assessments for a re-enrolling student; (2) information and requirements related to an application for STRF payment; (3) the maximum period of time to file claims based on the type of eligibility; (4) claims by government agencies on behalf of students; and (5) the STRF disclosures required to be in enrollment agreements and school catalogs.

Specifically, the regulatory proposal is as follows:

1. Amend section 76000(a) of Division 7.5 of Title 5 of the California Code of Regulations
This alters the definition of “California resident” for the purposes of this regulatory chapter.

2. Amend section 76000(c) of Division 7.5 of Title 5 of the California Code of Regulations

This makes changes to the definition of “Economic loss,” by adding to both what is covered by the definition and what is not covered for the purposes of this regulatory chapter.

3. Re-number sections 76000(d) to section 76000(e) and 76000(e) to section 76000(f) and add new section 76000(d) of Division 7.5 of Title 5 of the California Code of Regulations

This adds a definition of “Educational opportunity loss” for the purposes of this regulatory chapter.

4. Re-number section 76000(f) to section 76000(g) and amend new section 76000(g) of Division 7.5 of Title 5 of the California Code of Regulations

This changes the definition of “Qualifying institution” for the purposes of this regulatory chapter.

5. Re-number section 76000(g) to section 76000(h) and amend new section 76000(h) of Division 7.5 of Title 5 of the California Code of Regulations

This makes an alteration to the definition of “Residency Program” for the purposes of this regulatory chapter.

6. Re-number sections 76000(h) to section 76000(i), 76000(i) to section 76000(j), and 76000(j) to section 76000(k) and add new section 76000(l) of Division 7.5 of Title 5 of the California Code of Regulations

This adds a definition of “Third-party payer” for the purposes of this regulatory chapter.

7. Amend section 76020(a) of Division 7.5 of Title 5 of the California Code of Regulations

This modifies and expands who may be eligible to make a claim from the Fund.

8. Delete section 76020(b) of Division 7.5 of Title 5 of the California Code of Regulations

This deletes the subsection that makes students whose total charges were paid for by a third-party payer ineligible for making a STRF claim.

9. Delete section 76120(b) of Division 7.5 of Title 5 of the California Code of Regulations

This deletes the subsection that provides that students whose costs were paid by a third-party payer with whom they do not have an agreement to repay the third-party shall not pay the STRF assessment.

10. Delete section 76120(c) of Division 7.5 of Title 5 of the California Code of Regulations

This deletes the subsection that provides that the STRF assessment is non-refundable except under certain circumstances. This is now in statute.

11. Amend section 76130(a) of Division 7.5 of Title 5 of the California Code of Regulations

This splits subsection (a) into subdivisions (1) and (2). Subdivision (2) provides how an institution should collect a STRF assessment for a student who is re-enrolling at the same institution.

12. Amend section 76130(b) of Division 7.5 of Title 5 of the California Code of Regulations

This deletes reference to the outdated 2/10 version of the STRF Assessment Reporting Form and deletes redundant text.

13. Amend section 76200(a) of Division 7.5 of Title 5 of the California Code of Regulations

This deletes reference to the outdated 2/10 version of the Student Tuition Recovery Fund Application Form. It removes the requirement for proof that a student paid into STRF. It also makes additions to the information to be provided by a student making a STRF claim.

14. Amend section 76200(b) of Division 7.5 of Title 5 of the California Code of Regulations

This makes additions to the maximum amount of time a student has to file a STRF claim based upon the reason for the claim.

15. Deletes section 76200(c) of Division 7.5 of Title 5 of the California Code of Regulations

This deletes the section that provides that students whose total charges are paid by a third-party payer are not eligible to apply for payment from the Fund.

16. Re-number section 76200(d) to section 76200(c) and amend new section 76000(c) of Division 7.5 of Title 5 of the California Code of Regulations

This re-numbers this subsection and adds the basis for which the Bureau can request supplemental information or documentation from a student related to a STRF claim.

17. Add section 76210(a) to Division 7.5 of Title 5 of the California Code of Regulations

This provides that a student seeking reimbursement under the Fund that includes student loans as part of the claim must attempt to obtain a loan discharge directly from the loan holder before the Bureau can process the student's application for payment under section 76200.

18. Re-number section 76210(a) to section 76210(b) of Division 7.5 of Title 5 of the California Code of Regulations

This re-numbers this subsection.

19. Re-number section 76210(b) to section 76210(c) of Division 7.5 of Title 5 of the California Code of Regulations

This re-numbers this subsection.

20. Re-number section 76210(c) to section 76210(d) and amend new section 76210(d) of Division 7.5 of Title 5 of the California Code of Regulations

This rennumbers this subsection, makes a grammatical change to the text, and adds clarifying language.

21. Re-number section 76210(d) to section 76210(e) and amend new section 76210(e) of Division 7.5 of Title 5 of the California Code of Regulations

This re-numbers this subsection and makes a technical change to maintain logic and clarity.

22. Adopt section 76210(f) of Division 7.5 of Title 5 of the California Code of Regulations

This provides for payment from the STRF for students whose charges were paid by a third-party payer. This also provides the method, conditions, and limitations of payments based on third-party payer claims.

23. Re-number section 76210(e) to section 76210(g) and amend new section 76210(g) of Division 7.5 of Title 5 of the California Code of Regulations

This renumbers this subsection and makes a grammatical change to the text.

24. Re-number section 76210(f) to section 76210(h) of Division 7.5 of Title 5 of the California Code of Regulations

This renumbers this subsection.

25. Re-number section 76210(g) to section 76210(i) of Division 7.5 of Title 5 of the California Code of Regulations

This renumbers this subsection.

26. Re-number section 76210(h) to section 76210(j) of Division 7.5 of Title 5 of the California Code of Regulations.

This renumbers this subsection.

27. Amend section 76212 of Division 7.5 of Title 5 of the California Code of Regulations

This makes clarifying changes to provide that STRF claims brought by a government agency on behalf of students may be paid directly to the students under certain conditions.

28. Amend section 76212(a) of Division 7.5 of Title 5 of the California Code of Regulations

This makes clarifying changes that are consistent with the definition of qualifying institution.

29. Amend section 76212(c) of Division 7.5 of Title 5 of the California Code of Regulations

This makes a clarifying change to specify that the government agency is the one that is filing this type of claim and must do so within two years after the judgment becomes final.

30. Amend section 76212(d) of Division 7.5 of Title 5 of the California Code of Regulations

This makes a clarifying change to provide that STRF claims brought by a government agency must state the amount of the judgment that is allocable to each student.

31. Amend section 76212(e) of Division 7.5 of Title 5 of the California Code of Regulations

This makes changes to the amount payable to each student from a claim by a government agency on behalf of students.

32. Add section 76212(f) of Division 7.5 of Title 5 of the California Code of Regulations

This adds that the claim by a government agency on behalf of students is subject to the same limitations and rights as other STRF claims.

33. Amend section 76215(a) of Division 7.5 of Title 5 of the California Code of Regulations

This makes alterations to the disclosures required to be in both the Enrollment Agreement and School Catalog.

34. Amend section 76215(b) of Division 7.5 of Title 5 of the California Code of Regulations

This makes alterations to the disclosures required to be in the School Catalog.

Anticipated Benefits of the Proposal

The broad objective of the proposed rulemaking is to make the current STRF regulations and eligibility categories consistent with SB 1247's changes to the Act, including by providing the structure for payment of claims by a student who suffers educational opportunity losses whose charges are paid by a third-party payer. The specific benefits anticipated from the regulation are increased protection of the students that suffer economic loss while enrolled at a private postsecondary educational institution in California, and clarification and guidance for students, institutions, and the Bureau on the procedures governing the administration and maintenance of the STRF.

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.

INCORPORATION BY REFERENCE

N/A

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Cost/Savings in Federal Funding: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 – 17630 Require Reimbursement: None

Business Impact: The Bureau has made initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses: None

Cost Impact on Representative Private Person or Business: The Bureau is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed regulations.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations would not affect small businesses. Institutions that qualify as small businesses are already required to collect any STRF assessments from students and remit the assessments to the Bureau. The proposed regulations make no changes to that requirement.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The Bureau has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation:

The Bureau has determined that this regulatory proposal will benefit the health and welfare of California residents by providing clarification and expanded eligibility for their receipt of STRF monies, and will otherwise bring the regulations into harmony with the new STRF provisions set forth in SB 1247. The proposal will have no effect on worker safety or the State's environment.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be 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 proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Bureau for Private Postsecondary Education, P.O. Box 980818, West Sacramento, CA 95798-0818.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below **[or by accessing the website listed below]**.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

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The backup contact person is:

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Website Access <http://bppe.ca.gov>: Materials regarding this proposal can be found at <http://bppe.ca.gov/>.