

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

**INITIAL STATEMENT OF REASONS
Date of Closure Selection**

Hearing Date: No hearing has been scheduled.

Subject Matter of Proposed Regulations: Date of Closure Selection

Sections Affected: Division 7.5 of Title 5 of the California Code of Regulations (CCR)¹; Amend section 76240 and add section 76245.

Background and Statement of the Problem:

The Bureau for Private Postsecondary Education (Bureau) protects students and consumers through the regulatory oversight of California’s private postsecondary educational institutions (“institutions”) pursuant to the California Private Postsecondary Education Act of 2009 (“Act” – Ed. Code, §§ 94800–94950), including conducting qualitative reviews of educational programs and operating standards.

Education Code section 94926 and CCR section 76240 require institutions that are anticipating closing to provide notice to the Bureau and supply both a date of closure and a last date of instruction. However, the statutes and regulations provide no guidance to the Bureau if an institution fails to comply. There have been many instances of an institution suddenly closing without providing any notice to the Bureau, and since the institution has ceased operating there is no way for the Bureau to sanction the institution’s owners or operators for failing to comply with section 76240, because the institution is no longer within the Bureau’s jurisdiction.

Establishing a date of closure for an institution is crucial for an affected student to be eligible for compensation from the Student Tuition Recovery Fund (STRF), which the State of California created for students in the event of an institution closing before the student completing their educational program and the student suffering economic harm. Knowing an institution’s date of closure is also critical for a student to apply for student loan relief under federal Student Financial Aid Programs authorized by Title IV of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1070 et seq. – federal Higher Education Act of 1965).

In 2022 the legislature passed, and the Governor signed, Senate Bill (SB) 1433 (Roth, Chapter 544, Statutes of 2022), which added Education Code section 94926.5 to the Act. Section 94926.5 provides, “(a) An institution’s approval to operate is automatically terminated on the date of closure or when its exemption from this chapter has been

¹ Unless otherwise noted, all references to the CCR hereafter are to Title 5.

verified by the bureau.

(b) An institution that does not identify a date of closure shall have one selected by the bureau.

(c) A terminated license shall not be reinstated.”

To address the problems stated above, the Bureau has drafted the following proposed regulatory changes:

Amending Section 76240 of the CCR to:

- Add “calendar” before the word “days”
- Add that “an authorized representative” shall notify the Bureau of an institution’s intent to close in writing “at the email address BPPE.closedschools@dca.ca.gov or by mail to the mailing address per CCR section 70020”
- Add a definition for “authorized representative”
- Add additional clarifications to the information required to be included in the closure plan
- Add additional information that an institution shall provide the Bureau if any student will not complete their educational program as a result of closure
- Move and edit requirements pertaining to teach out plans and refunds, student records, and how an institution will notify students affected by closure
- Move and edit requirements pertaining to how institution will provide notice to students affected by closure
- Add additional information required for institutions to provide the Bureau regarding the written notice of closure provided by the institution to students

Add Section 76245: Closure Date Selection and Automatic Termination of Approval to Operate

- This section will require the Bureau to send a notice to institutions the Bureau believes has closed without notifying the Bureau of a date of closure.
- The notice will request a response from an authorized representative to confirm whether the institution is operating or closed, and that the Bureau will select a date of closure if the Bureau does not receive a response, as well as how an institution may appeal the selection of a date of closure.

The proposed regulations improve the institutional closure process in two ways. First, it provides guidance to institutions that do supply a date of closure to the Bureau by establishing that the date of closure should be the same as the last date of instruction. Second, when the Bureau believes that an institution has closed without notifying the Bureau, it provides the means for the Bureau to select a date of closure for the institution and terminate the institution’s approval to operate.

Anticipated benefits from this regulatory action:

The proposed regulatory language will allow the Bureau to designate a date of closure for institutions that close without providing one to the Bureau. This will benefit students by enabling students enrolled at those institutions to establish eligibility for compensation from STRF, as well as apply for student loan relief from the federal Title IV financial aid programs. The proposed regulatory language will also implement the statutory language of Education Code section 94926.5, which will help ensure that the will of the legislature is effective by reconciling statutory language and regulatory language. This regulation will allow the Bureau to enforce provisions of the Act and further the Bureau’s mission of consumer protection for students seeking educational services from postsecondary institutions by helping to ensure that approved institutions comply with all legal requirements for operating an approved institution in California.

Specific purpose of, and rationale for, each adoption, amendment, or repeal:

- 1. Amend Section 76240, Article 4, Chapter 6, Division 7.5 of Title 5 of the California Code of Regulations**

76240. Required Notices and Teach-Out Plan.

Proposed Change: In subdivision (a), add “calendar” before “days”, and add “an authorized representative of” after “At least 30 calendar days prior to closing,” and add “also” between “and” and “provide”. After the first sentence add, “For purposes of this section, “authorized representative” shall mean any owner who owns or controls 25% or more of the stock or an interest in the institution, or any chief academic officer, chief executive officer, chief operating officer, institution director, or compliance officer.”

Purpose: Section 76240(a): Adding “calendar” before “days” is to clarify calendar days versus business days. The Bureau proposes adding a definition of “authorized representative” to restrict the options of who may communicate on behalf of an institution, as it is often difficult for the Bureau to know who may communicate on behalf of an institution that is closing, as personnel may be leaving for other employment and positions may be unfilled.

Rationale: It is necessary to amend 76240 for the Bureau to ensure that communication is with an individual with the authority to represent an institution so that the Bureau receives reliable information from a credible source. In the process of an institution closing, the Bureau is not always certain if it is communicating with someone in a position of authority to make reliable statements about the institution. If an institution is closing, oftentimes employees are given notice that their job is ending and are no longer authorized to speak for the institution, but the Bureau has no way of knowing whether the person communicating with the Bureau is still authorized.

At the same time, the Bureau cannot reduce the number of persons authorized to speak on behalf of the institution down to one, such as an owner or a Person in Control, as it may be difficult to get in touch with that person while the institution is closing. Therefore, the Bureau is creating a new definition of “authorized representative” and providing the authority to speak for the institution to several highly placed individuals in the institution’s hierarchy. The list of titles that may qualify as “authorized representative” is largely taken from CCR section 75010(c), which contains a list of individuals authorized to receive a notice to comply from Bureau personnel after minor violations have been identified during an inspection. The list is slightly modified to restrict “owner” to only those owners with at least a 25% interest in the institution, as only those owners can be verified by being a required signatory on the institution’s application for Approval to Operate or a subsequent renewal. The list also does not include “person in control” from the list in 75010(c), as the Bureau anticipates that term to be revised through regulation soon. Also, the change in definition of “person in control” is expected to incorporate the other job titles included here so including it would be redundant.

The list of possible “authorized representatives” also omits the option in section 75010(c) of the individual being a person designated by one of the aforementioned persons, as the point is for the Bureau to communicate with an individual authorized to speak on behalf of the institution based on their position, not because they are an alleged designee which the Bureau cannot verify.

In addition, the list also includes the title “compliance officer” because in the past the closure of an institution owned by a large corporation has sometimes been overseen by an individual with that title.

Restricting authorized communications to a small list of verifiable principal owners and senior administrators will assure that the Bureau is communicating with persons authorized to speak on behalf of the closing institution.

The word “also” is being added to the first sentence of subdivision (a) to emphasize that the requirement that the notice to the Bureau be in writing also applies to the submission of a closure plan.

Proposed Change: Add a new (a)(1) after “The closure plan shall include:” “(1) The institution’s name, its identification code assigned by the Bureau, physical address, mailing address, phone number, website address (if any), and whether the site is a main, branch, or satellite location. If more than one location is closing, a separate closure plan is required for each location.”

Purpose: When an institution begins the process of closure, the Bureau needs to be certain that the institution is identified accurately. With an increasing number of institutions operating multiple locations, it is necessary for the closing plan to identify the precise entity that is closing using multiple formats including name, identification code assigned by the Bureau, physical address, other contact information, and its status as a main campus, branch, or satellite location.

Rationale: It is necessary for the Bureau to request this information as part of the closure plan because while institutional closings sometimes consist of one institution at one location, often larger institutions consisting of multiple locations will close, sometimes all at the same time or sometimes in stages. Also, locations that close may be designated as a “branch” as defined in Education Code 94819, or as a “satellite” as defined in Education Code 94862, or as a “main campus” as defined in Education Code 94849.

To be clear about the institutional closing process, institutions must inform the Bureau as to whether the site that is closing is a “main campus,” “branch,” or “satellite,” and applicable information about the location’s name, institution identification code assigned by the Bureau, and contact information including physical address and mailing address, in addition to a phone number and website address. Also, the Bureau needs to have a separate closure plan for each location that is closing, to keep the information manageable in the event a large, multi-branch institution ceases operating at all locations all at once. A separate closure plan for each location is necessary as the date of closure might be different for different branches of the main institution. Also, the contact information for the authorized representative and the custodian of records may vary depending on the location. Having a separate plan for each location also is needed for the Bureau to respond to Public Records Requests about the various institutions in the future.

Proposed Change: Renumber (a)(1) as (a)(2). Add to (a)(2) the words, “of the closure” after “The exact date” and add “the” between “and” and “reason” in the first sentence.

Purpose: The Bureau is editing the language regarding the requirements of the closure plan to be as clear as possible. The current language conflates the request for the date of the proposed closure and the reason for the closure, and separating the two requests make the language easier to understand for institutions.

Rationale: The language in former subdivision (1), now renumbered as (2), is edited for clarity by specifying that what is being asked for is both the exact date of the closure and the reason for said closure. The words “of the closure” and “the” are inserted to make the sentence flow more intelligibly.

Proposed Change: Renumber current subdivision (a)(2) as (a)(3).

Purpose: The Bureau proposes renumbering this regulatory section to be consistent with the addition of new sub-sections.

Rationale: The subdivision currently designated as (a)(2) is being renumbered as (a)(3) to be consistent with the addition of a new subdivision (a)(1) above.

Proposed Change: Add a new subdivision (a)(4) which reads, “(4) The name, title, mailing address, email address, and telephone number of the individual who will function as the institution’s contact person for the purposes of the closure process.”

Purpose: As noted in the first part of sub-division (a), it is sometimes difficult for the Bureau to know who is authorized to speak on behalf of an institution that is closing. The Bureau proposes asking an institution undergoing closure to identify the individual that may communicate with the Bureau during the closure process and provide their contact information.

Rationale: It is necessary for the Bureau to know that the individual at an institution it is in communication with has the authority to speak for the institution during the closure process and is a reliable and credible point of contact. In subdivision (a) the Bureau created a definition of “authorized representative” to list persons who could be relied on to *initiate* the closure process on behalf of an institution based on their job title. Here, the Bureau is asking for the institution to designate a contact person for *continued* communication during the closure process. This requires identification of the individual’s name, title, and contact information.

Proposed Change: Renumber 76240(a)(3) as (a)(5), and add the words, “time period prior to closure provided in CEC Section 94923(b)(2)(B) and (C),” after “A list of students who were enrolled at any time during the”. Delete the words, “60 days prior to closure” and add the words, “which shall include the following student-level information, when applicable, for each student: (A) Student identification number, (B) First and last names, (C) Email address, (D) Local or mailing address, (E) Address at the time of enrollment, (F) Home address, (G) Telephone number, (H) Date enrollment agreement signed, (I) Courses and course costs, (J) Third-party payer identifying information, (K) Total institutional charges charged, and (L) Total institutional charges paid; (M) Whether or not the student would be entitled to an institution-provided refund as a result of the closure, as required by Education Code section 94927; (N) Graduation date, for students who completed their programs prior to closure.”

Purpose: This amends the regulation for clarity and adds requirements for information that an institution must provide to the Bureau related to students.

Rationale: The Bureau must obtain contact information about students and other information about their status to provide assistance to students who may be unable to complete their educational program due to an institutional closure. This will enable the Bureau to identify which students are eligible for relief and notify them of their rights.

Subdivision (a)(3) is renumbered as (5) to be consistent with the inclusion of two new subdivisions above. The existing language in prior section 76240(a)(3) requires that institutions provide the Bureau with a list of students enrolled at the institution 60 days before the proposed closure, but that does not correspond with the eligibility requirement for STRF under Education Code 94923(b)(2)(B) and (C), which is enrollment 120 days before closure. Deleting the 60-day language and replacing it with references to Education Code 94923(b)(2)(B) and (C) is necessary so if that eligibility period is ever altered in that statute, the regulation will still conform to that eligibility period.

The text is also amended to add a requirement that in addition to a simple list of students, the institution must also provide the Bureau with relevant student-level information that the institution is already required to possess either under Education Code section 94900 (telephone number, student program completion date) or section 76140 of this chapter (all other items).

The Bureau being given a list of names of students enrolled at the institution does not help the Bureau contact students who may be eligible for STRF and inform them of their possible right to reimbursement unless it is accompanied by contact information about the student. While the institution is required to inform students of their rights under STRF, if the Bureau does not hear from a potential applicant, it is the Bureau's procedure to attempt to contact the student before their ability to file expires. The student-level information the institution should already have will contain the contact information the Bureau needs to perform this task.

The information that institutions must submit (76240(a)(5)(A) through 76240(a)(5)(G)) includes basic identification information such as the student's identification number at the institution, first and last name, email address, local or mailing address, address at the time of enrollment, and home address, all of which institutions are required to maintain under 5 CCR section 76140. Telephone numbers for students are required to be kept by institutions under Education Code section 94900(a). This information will help the Bureau's Office of Student Assistance and Relief (OSAR) contact students about possible relief they may be eligible for if an institution closed before they completed their degree.

The date the student's enrollment agreement was signed, courses taken and course costs, third-party payer identifying information, and total institutional charges both charged and paid and whether the student is eligible for an institutional refund, (76240(a)(5)(H) through 76240(a)(5)(M)) help inform the Bureau and the Office of Student Assistance and Relief (OSAR) on the eligibility for recovery from the Student Tuition Recovery Fund (STRF) and the amount that might be recovered.

Information about students that completed their program and thus had a graduation date (76240(a)(5)(N)), required to be maintained by Education Code section 94900(b), allows OSAR to make a list of those students who did not complete their program, and therefore should be contacted by OSAR about their eligibility for relief from STRF or from a federal loan forgiveness program.

Proposed Change: Delete subdivision 76240(a)(4), (a)(4)(A) and (a)(4)(B).

Purpose: This section is reorganized for clarity, as the current organization of section 76240 puts several elements under this one subsection when it would be clearer to put them in separate sub-sections.

Rationale: Subdivision (a)(4) and its two subdivisions are being deleted to reorganize the remainder of 76240.

Subdivision (4) deals with the two plans an institution must submit to the Bureau if there are any students who would not be completing their educational program. Subdivision (a)(4)(A) requires a plan to be submitted if the institution had made arrangements for providing teach-outs or transfers, including the details of agreements with other institutions. This provision is being replaced by the new subdivisions (c)(1) and (c)(2).

Subdivision (a)(4)(B), which requires a plan from institutions not contemplating a teach-out, or which has student who did not want to participate in a teach-out, to have a plan for making refunds within 45 calendar days of closure and, for institutions participating in federal student financial aid programs, to make arrangements for making refunds and returning funds to federal student financial aid programs. This provision is being replaced by new subdivisions (c)(3) and (d). Thus, deletions of subdivisions 76240(a)(4), (a)(4)(A) and (a)(4)(B) are necessary to accommodate the new provisions.

Proposed Change: Delete subdivision 76240(a)(5).

Purpose: Subdivision (a)(5) is being deleted to reorganize the remainder of 76240.

Rationale: Subdivision (a)(5), which required institutions to provide a plan for the disposition of student records, is being deleted and replaced by proposed subdivision (a)(7) which requires a description for how records will be maintained, including contact information for the custodian of records, and (b)(2) which requires that institutions inform students of the contact information for the custodian of records.

Proposed change: Delete subdivision 76240(a)(6).

Purpose: Subdivision (a)(6) is being deleted to reorganize the remainder of 76240.

Rationale: Subdivision (a)(6), which required institutions to report a plan for notifying students of their rights and options under the Bureau's laws and regulations, is being replaced by (b)(3) which requires that students be given contact information for the Office of Student Assistance and Relief as it currently appears in the institution catalog, which can help students understand their rights under the Bureau's laws and regulations. New subdivision (d) also contains a requirement that institutions provide students who will not complete their program information on their right to receive a refund from the institution or obtain relief from STRF.

Proposed Change: Add new subdivision (a)(6): "(6) A written description of how the institution will maintain the student records as required by Education Code section 94900 and section 76140 of the California Code of Regulations, including providing the Bureau with the name, mailing address, email address, and telephone number of the custodian of records."

Purpose: This requires institutions that are closing to specify how the institution will maintain the records it is legally required to maintain after closure, which includes contact information for the custodian of records.

Rationale: Previous subdivision (a)(5) is being deleted and replaced by a new (a)(6). The previous (a)(5) merely required institutions to provide the Bureau with “A plan for the disposition of student records” which is somewhat vague.

The prior language is being deleted and the replacement section specifies that the institution provide the Bureau with a description of how the institution will maintain records. This is required by Education Code section 94926(d), and also requires the institution to provide the identification and contact information for the custodian of records, which is required to be reported in the institution’s application for approval by section 71310. While the existing text requires institutions that are planning to close to submit a plan regarding student records, it does not require that they provide any information about the identity and contact information for the individual who will be the custodian of records after the institution closes. While institutions are already required to report information about their custodian of records in their application for Approval to Operate under 71310(b) and on their renewal application under 71475(dd)(2), it is necessary for the Bureau to have the institution confirm the identity of the custodian of records and their contact information at the time of the institution’s closing in case the Bureau needs access to such records.

After the institution closes, the custodian of records will be the only point of access for a student to acquire copies of their transcripts and other aspects of their records in the institution’s possession, making their contact information of critical importance. Therefore, providing students with the contact information is important to allow them access to their transcripts or other records. The Bureau needs the custodian of records’ contact information in the event that a student that left the institution before it closed later needs their records and they contact the Bureau for assistance. The custodian of records maintains the records for all students, not just those whose educational program was interrupted by the institution’s closure.

Proposed Change: Add a new (subdivision (a)(7) to read, “(7) A written description of how the institution will notify the students identified in section 76240(a)(5), in writing, either by mail to their current address or to their current email address, of the information required to be sent to students in section 76240(b).”

Purpose: This requires institutions that are preparing to close to give the Bureau a description of how the institution will send notice to students attending the institution informing them before it closes of the impending closure and student rights regarding the closure.

Rationale: This amendment is necessary to protect students affected by closure because the existing regulation does not specify which students should be notified of the institution’s closure, but this requirement should apply only to those students enrolled within the period of eligibility for relief from STRF, currently set at 120 days before closing [identified now in subdivision (a)(5)]. Any other students would not have any

relevant rights under law. Therefore, the Bureau is amending this subdivision to require the notice only be sent to students identified under (a)(5).

The new language also specifies that the notice must be in writing. In the past, institutions informed the Bureau that they gave students notice of closure orally, but this is difficult for the Bureau to verify, and the content cannot be checked for accuracy. The Bureau is therefore adding the requirement that the notice be made in writing.

In addition, new subdivision (d) below will require that the notice made under this subdivision include contact information for the custodian of records and contact information for the Office of Student Assistance and Relief (OSAR). The custodian of records will be the only person from whom students will be able to obtain a copy of their records, including their transcripts, making this information critical if they are going to continue their education at another institution. OSAR will be able to provide students with information on “the rights and options under the Act and this chapter” as required by this subdivision, which will make the notice more useful to students.

Proposed change: Delete subdivisions 76240(b), (b)(1), and (b)(2).

Purpose: Subdivision (b) and (b)(2) are being deleted to reorganize the remainder of 76240.

Rationale: This section is edited and reorganized for clarity. Subdivision (b) required institutions to provide two notifications to students. Subdivision (b)(1) required institutions that participated in federal student financial aid programs to notify students about those programs related to institutional closures, and this requirement is being carried over into the revised regulation but is renumbered as (b)(4). Subdivision (b)(2) required that students who would not be completing their educational program be notified about the Student Tuition Recovery Fund (STRF), and this provision is being replaced by proposed regulations (b)(3).

Proposed Change: Add new section 76240(b): “(b) The institution shall provide to all students identified in section 76240(a)(5) written notice, either by mail to their address or to their email address of record, that shall include:

- (1) Notice of the closure and the anticipated date of closure identified to the Bureau;
- (2) The name, physical address, email address, and phone number for the custodian of records and instructions on how students can access their institution records;
- (3) The statement regarding the Office of Student Assistance and Relief required to be included in the institution’s catalog by Education Code section 94909(a)(3)(D); and
- (4) If the institution is a participant in federal student financial aid programs, it shall provide students information concerning those programs and institutional closures.”

Purpose: New subdivision (b) replaces deleted subdivision (b) which required the institution to send a notice to students concerning possible relief from federal student financial aid programs and relief from the Student Tuition Recovery Fund. New subdivision (b) specifies that the notice required previously in now-deleted subdivision (a)(6) contain more specific information than the existing regulations.

Rationale: The Bureau proposes editing the language to be more precise than existing language, as the previous language only required the notice of the institution's impending closure to be sent to those students identified as being enrolled at the institution that is closing within the STRF eligibility period (currently 120 days before closing) and not to all students.

It is necessary to mandate that institutions inform affected students about the anticipated date of closure, so that students can anticipate when instruction will end so that students can prepare for next steps educationally and financially.

It is also necessary for institutions to provide contact information for the custodian of records for the institution, which is essential for students to obtain copies of their records after closure, which may facilitate transfer processes.

The new provision also requires that notice also must include the language required to be included in catalogs by Education Code 94909(a)(3)(D), which is, "The Office of Student Assistance and Relief is available to support prospective students, current students, or past students of private postsecondary educational institutions in making informed decisions, understanding their rights, and navigating available services and relief options. The office may be reached by calling (toll-free telephone number) or by visiting (internet website address)."

Since the text of the existing regulation was re-adopted by the Bureau in 2010, the legislature amended the Education Code and SB 1192 (Chapter 593, Laws of 2016) created the Office of Student Assistance and Relief in the Education Code at 94949.7 et seq. The stated purpose of OSAR in Education Code 94949.7 is, "for the purpose of advancing and promoting the rights of prospective students, current students, or past students of private postsecondary educational institutions." Education Code 94949.72 defines the duties of OSAR as, "Conducting outreach and providing information and assistance to students who have been affected by the unlawful activities *or closure of an institution regarding their rights under state and federal law*, including information about how and where to file a complaint, and *to ensure that those students successfully access available state and federal relief programs.*" (Emphasis added).

The Bureau is now updating the notice requirement in 76240(b) to mandate a reference to OSAR in the notice. This will assist students who visit the Bureau's website looking for help after the closure of their institution interrupts their educational progress.

It is necessary for an institution that participates in Federal Title IV Financial Aid to provide students with information concerning those programs and institutional closures

so they are aware of their financial aid status, and the options available to them under federal laws and regulations. This language is consistent with Education Code section 94926, and this is a reorganization of prior existing regulation language.

Proposed Change: Add new subdivision (c): “(c) In addition to the requirements of 76240(a), if as a result of the closure any student will not complete their educational program, the institution shall provide to the Bureau at the same email address as in 76240(a):

- (1) A copy of written agreements with other institutions for providing teach-outs, if applicable.
- (2) A copy of written agreements with other institutions for accepting transfers, if applicable.
- (3) A copy of the institution’s arrangements, as required by Education Code section 94926, for making refunds within 45 calendar days from the date of closure to all students who will not complete their educational program, and who also choose not to participate in any teach-out arranged.
- (4) If the institution participates in federal financial aid programs authorized by Title IV of the Higher Education Act of 1965, a copy of the institution’s arrangements to return federal student financial aid program funds.”

Purpose: The new subdivision 76240(c) replaces former subdivision (a)(4)(A) and (B), which requires institutions to provide the Bureau with information on the institution’s plan for dealing with students who will not complete their educational program because of the institution’s closure. The previous language mixed plans for teach-outs (defined at Education Code section 94866 as, “the arrangements an institution makes for its students to complete their educational programs when the institution ceases to operate”) and transfers together, and (a)(4)(B) contained two uses of the word “or” making it confusing. Also, the existing language in (a)(4)(A) asks institutions to provide a “plan” which could be open to interpretation.

Rationale: The proposed subdivision (c) is edited for clarity and separates the different possibilities into four separate subdivisions, and asks for copies of specific documents instead of a “plan.” Now before closing, aside from students who will complete their educational program before closing, if there are students who will not be provided complete educational services or complete their educational program due to the closing, an institution must also provide the Bureau with specific requested information. The documents that the institution must provide, if there will be students who will not be provided complete educational services or do not complete their educational program, include copies of agreements with other institutions to provide teach-outs, copies of written agreements with other institutions concerning transfers, and copies of the

arrangements for making refunds within 45 calendar days for students who choose not to participate in the arranged teach-out. The documents to be required under the new subdivision (c) will provide the Bureau with much more precise information than what is required under the existing (a)(4)(A) and (B).

It is necessary for an institution to provide the Bureau with a copy of written agreements with other institutions for providing teach-outs, if there will be teach-outs, because the Bureau may need to provide assistance to students in transferring to other institutions participating in teach-out arrangements organized by the institution. This assistance may include information regarding an institution's location, programs, accreditation or other information that the Bureau may have regarding those institutions with whom the closing school has made arrangements for a teach-out, or regarding those institutions to which students impacted by the closure may transfer.

It is necessary for an institution to provide the Bureau with a copy of written agreements with other institutions for accepting transfers, if applicable, so the Bureau can similarly assist students in finding an institution to transfer to after the closure of the institution if that is what they wish to do.

It is necessary for an institution to provide the Bureau with a copy of the institution's arrangements, as required by Education Code section 94926, for making refunds within 45 calendar days from the date of closure to all students who will not complete their educational program, and who also choose not to participate in any teach-out arranged. The Bureau needs to make sure that the statute is being complied with, and that the arrangements are in compliance with other provisions of the Act.

The new subdivision 76240(c)(4) requires institutions, prior to closing, to submit to the Bureau a copy of the institution's arrangement to return federal student financial aid program funds, assuming the institution participates in federal student financial aid and that there are students who have received such funds. It is necessary for the Bureau to have this information because it is likely that Bureau personnel will be more familiar with the intricacies of federal laws and regulations and can make sure that the return process will be done as efficiently as possible.

The existing regulations require such information be sent to the Bureau under 76240(a)(4)(B). This continues this requirement but does so in a context that is distinct from other considerations such as refunds whether teach-outs are offered or whether students are entitled to refunds after 45 days, making the requirement clearer to understand.

Proposed Change: Add new subdivision 76240(d): "(d) In addition to the requirements of section 76240(b), for all students who will not complete their educational program, the notice of the closure provided to those students shall state whether there have been teach-out or transfer arrangements made, and if so, the name(s) of the institution(s) providing the teach-out or accepting transfers, and those institutions' physical address,

email address and phone number, the student’s right to refuse to participate in a teach-out and to instead obtain a refund from the institution, and the address for the Student Tuition Recovery Fund (STRF) page on the Bureau’s internet website.”

Purpose: This revision is to edit the options available to students upon the closure of their institution before they are able to complete their program for clarity, by providing notice of teach-out or transfer options, and the availability of a refund or relief from STRF.

Rationale: New subdivision (d) replaces existing subdivision (b)(2) which requires notifying students about their options after closure if they do not complete their educational program, including information on the Student Tuition Recovery Fund (STRF) and the possibility of recovering lost tuition after an institutional closure. New subdivision (d) also replaces current subdivision (a)(4)(A) and (B) regarding information concerning teach-outs, transfers, and refunds.

The new provision, unlike the existing one, limits the notice required only to go to students enrolled within the statutory eligibility period for STRF, currently 120 days, which is more efficient than the existing version which requires notice for all students. STRF was created under Education Code section 94923 to provide relief to students who lose tuition when an institution closes before they can complete their educational program, so it is important that all students potentially eligible for STRF be given the contact information to obtain the potential relief established in STRF statutes.

The information required to be communicated to students who will not be completing their educational program due to the institutional closure includes the information contained in the institution’s closure plan under Education Code section 94926 for the provision of teach-outs or transfers, if arrangements have been made (currently contained in sub-division (a)(4)(A)), and the student right to a refund if the student declines to participate in any offered teach-out or transfer arrangements (currently in sub-division (a)(4)(B)). The institution is also required to inform students unable to complete their educational program about the possibility of recovering their tuition through STRF, as well as contact information about the Bureau to get information about how to submit a claim. This information is necessary to make students who are unable to complete the educational program they began financially whole after their institution’s sudden closure.

Proposed Change: Add new subdivision 76240(e): “(e) Within 5 calendar days after an institution provides notice of closure to affected students in subsections 76240(b) and (d), the institution shall provide an exemplar copy or copies of the notice or notices described in 76420(b) and, if applicable, 76240(d), to the Bureau.”

Purpose: Requiring institutions that are closing to provide the Bureau with copies of the notice required to be distributed to students would allow the Bureau to examine the notices for compliance with regulations.

Rationale: Existing regulations do not require institutions to provide written notice in all cases, and if they do, they do not require samples to be provided to the Bureau. This may lead to situations where institutions can claim that notices were given orally to students, making it impossible to verify that the notice was given and that the content of the notice was accurate and complete.

The revised version of 76240 is being amended with the provisions in 76240(e), which requires that an institution provide the Bureau with an example of the notices required by new subdivisions (c) and(d) above if the institution participates in federal student financial aid programs. This will allow the Bureau to make sure that notices are provided to students in a format that will allow them to retain the contents of the notice, as well as allow the Bureau to verify that the content of the notices are accurate and complete.

The institution is allowed 5 calendar days after notice of closure to provide the exemplars to the Bureau, as the institution is busy in the process of closing and the longer the time frame that institutions are given to submit the documents, the greater the chance that the institution will close permanently, and the Bureau will be unable to contact any person in authority connected with the institution.

Proposed Change: In the Note for section 76240, add “94923,” after “94911” in the Reference section.

Purpose: This text is being added to assure that the Reference section of the Note accurately reflects the statutory authority for the provisions of the section.

Rationale: Section 76240(a)(4) is being amended to now include a reference to Education Code section 94923, which establishes the eligibility period for students to receive compensation from STRF when an institution closes before a student completes their educational program. Therefore, this Code section is being added to the list of Code sections referenced in the Note.

2. Add Section 76245, Article 4, Chapter 6, Division 7.5 of Title 5 of the California Code of Regulations.

76245. Closure Date Selection and Automatic Termination of Approval to Operate.

Proposed Change: Add a new section 76245 which states, “If the Bureau believes that an institution has closed without notifying the Bureau of a date of closure, the Bureau shall send a notice to the mailing address of the institution, and to the institution’s agent for service of process. The notice shall:

(a) request a response from an authorized representative, signed under penalty of perjury and sent to the Bureau within 30 calendar days of the date indicated on the notice, to either confirm that the institution has not closed and is operating as a private postsecondary institution, or confirm that the institution has closed and provide a closure date; and

(b) inform the institution that if the Bureau does not receive a response to the notice within 30 calendar days of the date of the notice, the Bureau will select the date 31 calendar days after the notice was sent as the institution's closure date and that the institution will no longer hold approval to operate after that date; and

(c) notify the institution that the institution may appeal the Bureau's selection of a date of closure by sending, no later than 60 calendar days after the date on the Bureau's notice, a request to the Bureau for a hearing. The proceedings under this section shall be conducted in accordance with Article 10 (commencing with Section 11445.10) of Chapter 4.5 or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, as requested by the institution."

Purpose: This new regulation is to implement the legislature's passage of Education Code section 94926.5 (Senate Bill (SB) 1433 (Roth, Chapter 544, Statutes of 2022), which authorizes the Bureau to select a date of closure for institutions that have closed without identifying a date of closure. The proposal establishes that if the Bureau believes an institution has closed without giving a date of closure, then the Bureau shall request confirmation from an authorized representative that the institution is open, and if no response is received the Bureau will identify a date of closure effective 31 calendar days after the request was sent.

Rationale: Education Code section 94926.5(b) directs the Bureau to select a date of closure for an institution that has not identified one. To do this, the Bureau must first establish that an institution that has not sent a notice to the Bureau has, in fact, closed, as an open institution would also not have sent a notice of closure to the Bureau.

There are a variety of reasons why the Bureau may suspect that an institution that has not sent a closure date to the Bureau has closed. The institution may have failed to respond to a communication from the Bureau where a reply was required to be made by a certain date; or, the Bureau might have received complaints from students at the institution that scheduled classes were no longer being taught, or that classrooms were no longer accessible because the building was locked. It might also be the case that an institution failed to submit an application for re-approval to operate by the required deadline.

When the Bureau believes that an institution has closed, but the Bureau has not received a notice of the intent to close and a selected date of closure 30 days prior to closing, it would begin the process to establish whether an institution is closed by sending a notice to both the mailing address of the institution and to the designated agent for service of process. The Bureau will send a notice to the mailing address on record for the institution, as well as to the agent for service of process, and will: 1) ask that an authorized representative confirm either that the institution is not closed, or confirm that it is closed as of a stated date of closure, within 30 calendar days; 2) alert the institution that failure to respond to the request for confirmation will result in the Bureau selecting a date of closure for the institution that will be 31 days after the date the notice was sent,

which will automatically terminate the institution's approval to operate as a matter of law under Education Code 94926.5; and 3) inform the institution of its ability to appeal the selection of a date of closure by the Bureau within 60 calendar days of the date of the notice, or in other words 30 calendar days from the day that their response was due at the Bureau.

Since Education Code section 94926.5(b) requires the Bureau to determine a date of closure for any closed institution that does not identify one itself, the Bureau aims to implement the statutory requirement by informing an institution that failure to establish a date of closure by responding to the Bureau's notice will result in the date of closure 31 days after notice was sent. The date of closure that the Bureau will select will be a date that the Bureau can confirm, namely the date 31 days after the Bureau sent the notice to the institution, or in other words the day after the deadline for responding. The institution also needs to be told that the consequence of failing to identify a date of closure (or confirm it is still operating) is termination of its approval to operate under Education Code section 94926.5(a).

The institution needs to be informed that it does have a right to appeal the Bureau's decision to select a date of closure for the institution, but that right extends only for 30 days after the selection of a date of closure is made. The appeal period must be given a finite period of time in order to resolve the situation, and a 30-day limit allows students who are eligible for relief from STRF to proceed with their application without delay.

The institution is also informed that if they wish to file an appeal, they will have to make a decision about what appeal process they wish to use, either under Article 10 (commencing with section 11445.10) of the Government Code, or under Chapter 5 (commencing with section 11500) of the Government Code. This is consistent with Education Code section 94940, which establishes that a hearing under one of these two provisions is the procedure to follow if an institution wants a hearing after an adverse administrative action.

Proposed Change: After the new 5 CCR section 76245, add "Note: Authority cited: Sections 94877 and 94885, Education Code. Reference: Sections 94874.5, 94909, 94911, 94926, 94926.5, 94927, and 94927.5, Education Code."

Purpose: The statutory authority and references for the regulation are referenced in the Note that follows the new regulation.

Rationale: Government Code section 11344(e) requires that the Office of Administrative Law ensure, "that each regulation is printed together with a reference to the statutory authority pursuant to which it was enacted and the specific statute or other provision of law which the regulation is implementing, interpreting, or making specific." Therefore, The Note section of proposed regulation 76245 cites two sources of authority for the regulation, Education Code section 94877, which directs the Bureau to adopt regulations

to implement its statutory authority, and section 94885, which directs the Bureau to adopt regulations to implement statutorily required minimum operating standards.

The Note section also contains references to the statutes specifically being implemented, including Education Code section 94874.5, which requires exempt institutions to comply with Education Code section 94927.5; Education Code section 94926, which pertains to procedures prior to a institution closing; Education Code section 94926.5, which authorizes the Bureau to select a date of closure for an institution that has not chosen one and terminate the institution's Approval to Operate; Education Code section 94927, which concerns institutions that default on enrollment agreements by closing before students complete their programs, and Education Code section 94927.5, which specifies which records all institutions, including exempt ones, must provide to the Bureau prior to closing. As each of these sections is being implemented by the proposed regulation, they are listed in the Note as References.

Underlying Data

Technical, theoretical, or empirical studies, reports, or documents relied upon:

1. The provisions of this proposed regulation were discussed at the Bureau's Advisory Committee meeting on February 16, 2023. The text of what was presented is at pages 91-94 of the meeting materials located at https://www.bppe.ca.gov/about_us/meetings/materials/20230216_acm.pdf. The discussion of the proposal can be found at page 7 of 9 of the minutes of the meeting in the meeting materials of the Advisory Committee's meeting on May 24, 2023, located at: https://www.bppe.ca.gov/about_us/meetings/materials/20230524_acm.pdf.

Business Impact:

The Bureau has made the initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses including the inability of California businesses to compete with businesses in other States.

This initial determination is based on the following facts/evidence/documents/testimony or other evidence:

The Bureau estimates 100 institutions will close per year of which 20 institutions will fail to fully comply with the notification requirements, as specified.

As a result, the proposed regulations are estimated to result in an economic impact to these institutions of approximately \$9,300 and up to \$93,000 over a ten-year period.

Economic Impact Assessment:

The regulatory proposal will have the following effects:

- It will not create or eliminate any jobs within the State of California because the institutions required to comply with the notification requirements are already closing business operations.
- It will not create new businesses or eliminate businesses in the State of California because the institutions required to comply with the notification requirements are already closing business operations.
- It will not affect the expansion of businesses currently doing business in the State of California because the institutions required to comply with the notification requirements are already closing business operations.
- The regulatory proposal benefits the health and welfare of California residents by allowing students who enrolled at institutions that closed without providing a date of closure to the Bureau to more quickly apply for financial relief from the Student Tuition Recovery Fund and from federal student loan programs and therefore get their relief more quickly.
- The regulatory proposal does not affect the state's environment because it requires allows the Bureau to select a date of closure for schools that close and do not select one for themselves, which should not affect the state's environment.
- The regulatory proposal would not affect worker safety because these regulations are not relevant to the enhancement of worker safety and are to conform the Bureau's regulations to statutory language.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No such alternatives have been proposed, however, the Bureau welcomes comments from the public.