

Bureau for Private Postsecondary Education

FINAL STATEMENT OF REASONS

Hearing Date: July 12, 2016

Subject Matter of Proposed Regulations: Prioritization of Complaints and Compliance Inspections

(3) Sections Affected: Amend sections 75200 and 75210; Adopt section 75300.

UPDATE OF INITIAL STATEMENT OF REASONS AND UPDATED INFORMATION

The Initial Statement of Reasons and Updated Informative Digest are included in the file. The information contained in the Initial Statement of reasons is updated as follows:

	Location in Initial Statement of Reasons:	Updated Information:
1.	Pg. 1 (“General Purpose of adoption, amendment, or repeal” paragraph)	Add to the end of the paragraph, the following: “Finally, the Act, section 94932.5(b), requires the Bureau to, by regulation, set forth policies and practices for providing notice to students enrolled at an institution of the results of each inspection of the institution.”
2.	Pg. 2 (first “Anticipated Benefits” paragraph)	Add “and/or unannounced” between “immediate” and “compliance”, and after “immediate” in second sentence; delete “these” before “regulations” in the second sentence.
3.	Pg. 2 (“Section 75200(c)/ “Problem...Rationale” paragraph)	Remove “or equal” after “the same” in first sentence.
4.	Pg. 3 (first “Problem...Rationale” paragraph)	Add to end of the last sentence in the paragraph (before the period): “(see, Act, Section 94816, which states that “[a]n approval to operate shall be issued only to an applicant” and “applicant means a person [natural person or business organization]”)”
5.	Pg. 4 (“Problem...Rationale” paragraph)	Add before the first sentence of the paragraph: “Section 94932.5 of the Act requires that the Bureau adopt regulations regarding the notice to students of the results of each inspection.” Add a last sentence to the paragraph: “The provisions requiring the notice to contain the date and time of the announced inspection and to be maintained and kept unobstructed until the completion of the inspection, ensure that the notice is posted for all to see during the five business days and throughout the inspection. It also ensures that students get precise information about the date and time of the inspection. Otherwise, a school could post the notice in an hidden place five days prior to the inspection, and then

		remove it immediately, well before the inspection.
6.	Pg. 4 (last “Anticipated Benefit” paragraph)	Add “, and that students may obtain the results of the inspection.” to the end of the last sentence.
7.	Pg. 5 (“Section 75210(b)/ “Proposed Change” paragraph)	Change “the Notice(s)” to “a Notice” and change “following the completion of” to “during.”
8.	Pg. 5 (“Section 75210(b)/ “Problem...Rationale” paragraph)	Change “the Notice(s)” to “Notice” and change “inform” to “informs.”
9.	Pg. 5 (“Section 75210(b)/ “Anticipated Benefit” paragraph)	Change “Notice(s)” to “Notice.”
10.	Pg. 5 (“Section 75210(c):” paragraph)	Add to end of sentence: “, and clarifies that all student notices shall be provided by the Bureau to the institution.”
11.	Pg. 5 (“Section 75210(c)/ “Proposed Change” paragraph)	Add to end of sentence: “, and clarifies that all student notices shall be provided by the Bureau to the institution.”
12.	Pg. 5 (Section 75210(c)/ “Problem...Rationale” paragraph)	Clarifying that the notices shall be provided by the Bureau to the institution, including in the appropriate language(s), ensures that the institutions use consistent wording in the notices, and alleviates the school’s burden of interpretation of the notice language into any necessary languages, and allows the Bureau to readily confirm compliance.
13.	Pg. 9 (number 4)	Add to the end of the last sentence: “, and is unnecessary because the Bureau already knows the languages the institution is approved to teach courses.

The 45-Day public comment period began May 27, 2016, and ended July 12, 2016. The Bureau for Private Postsecondary Education (Bureau) held a regulatory hearing on July 12, 2016, in Sacramento, California. The Bureau received one comment during the 45-day comment period and no comments at the hearing.

The Bureau issued a 15-Day Notification of Modified Text on August 22, 2016. In response to a comment (see Comment 1.3 below), the Bureau changed the wording of the originally proposed text, specifically at Section 75200 (re-lettered to subsection (b)), from “the owner’s approval to operate,” to the “owner’s approval(s) to operate any and all institutions” to clarify that the “history” at issue is not limited to one approval to operate, but applies to any and all approvals to operate, including the owner’s approvals to operate other institutions.

The Bureau received no comments to the modified text.

The Bureau issued a second 15-Day Notification of Modified Text on November 18, 2016. The Bureau amended the proposed text, specifically at Section 75210(c), to clarify that the notices in the appropriate language(s) must be posted both physically at the institution, and delivered to students pursuant to subsections (a) and (b).

The Bureau received one comment to the modified text.

LOCAL MANDATE DETERMINATION

The proposed regulations do not impose any mandate on local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING INITIAL NOTICE PERIOD OF MAY 27, 2016, THROUGH JULY 12, 2016, AND THOSE RECEIVED AT THE PUBLIC HEARING ON JULY 12, 2016.

COMMENT NO. 1.1: CAPPS (see p.1) stated that the 7-day notice in section 75200(a) should be defined as 7 working days, not calendar days. Further, CAPPS suggested that the period should be expanded to 10 working days to accommodate staff schedules and workloads being reassigned at the institution.

- Response: The comment is not directed at any proposed change. Section 75200(a) was only re-lettered to maintain the order. No other changes were proposed to this section. Nevertheless, the Bureau believes 7-days is sufficient notice for an announced inspection, which, while “announced,” is still intended to be an inspection of the institution that reflects the activities of the institution at that time. Moreover, in reality, the Bureau generally begins asking for documents and other information from the institution as much as a month before the inspection, providing far more than the minimum 7-days that are required.

COMMENT NO. 1.2: CAPPS (see p.1) stated with regard to section 75200(a) that if an institution is simultaneously having another inspection such as by an accreditor, that the Bureau should reschedule the Bureau’s inspection if possible.

- Response: As mentioned above, this section was not subject to a change other than re-lettering. Moreover, the Bureau’s inspections are required by the Act, and it would be an undue burden on the Bureau to have to reschedule staff and schedules after preparing for an announced inspection. The institutions are subject to inspections by both the Bureau and an accreditor, and nothing prevents them happening during the same time or overlapping.

COMMENT NO. 1.3: CAPPS (see p1.) commented with respect to the new 75200(b) that “history of the owner’s approval” should be clarified as to what exactly is the owner’s “history” that the Bureau is looking at to determine higher risk, and that the criteria is potentially discriminatory.

- Response: The Bureau agreed that clarification was necessary, and added language to specify that the owner’s history of approval includes any and all approvals for any and all institutions owned by that particular owner. An owner with a enforcement record as it relates to any approvals to operate could indicate a problem with the owner’s ability to operate an institution in compliance with the laws that protect students.

COMMENT NO. 1.4: CAPPs (see p.2) stated with regard to section 75200(c) that if the Bureau chooses to exceed the number of required inspections, it should be required to explain the reason and objective.

- Response: The comment is not directed at any proposed change. The only changes to subsection 75200(c) are re-lettering and changing two years to five years because the statute changed that timeframe. Moreover, the Act does not provide a maximum number of inspections, only a minimum, and thereby does not prohibit additional inspections. Furthermore, one purpose of a prioritization system is to identify those institutions at risk so that more oversight (including inspections) is given to protect the public welfare. Sections 94932 and 94935.5 of the Act give the Bureau broad authority for consumer protection, without requiring the Bureau to give the institution the objective or reason for any necessary inspections.

COMMENT NO.1.5: CAPPs (see p.2) stated in relation to section 75210 that the phrase “regulatorily required” be added before the phrase “announced compliance inspection” to the Notice to Students regarding the announced compliance inspection. CAPPs did not want students to think it is a “government raid.”

- Response: The Bureau disagrees. “Announced compliance inspection” is clear and adding “regulatorily required” before it makes it wordy. Also, there is no evidence that students would think it means a “raid” by the government.

COMMENT NO.1.6: CAPPs (see p.2) stated regarding section 75300 that both “financial harm to students” and “financial instability of institution” are overly broad and vague, and are “concepts,” not conditions or precise criteria.

- Response: The Bureau disagrees. Section 94941 of the Act says the Bureau shall adopt regulations with “categories of complaints,” not conditions or precise criteria for these priority regulations. The categories put forth by the Bureau are similar to the categories of priorities in the Act and reflect the Bureau’s experiences in dealing with institutions and complaints. The categories must be somewhat broad to cover all factual scenarios that could result in “financial harm to students.”

COMMENT NO.1.7: CAPPs (see p.2) also stated regarding section 75300, that the category of “breach of enrollment agreement” should be amended to “material breach” or “breach causing actual harm to the student.” CAPPs’ states that an institution could be shut down for something as trivial as not having the agreement in the correct font.

- Response: The Bureau disagrees. Adding “material breach”, would cause ambiguity as to what is “material.” However, these regulations are not about regulating enrollment agreements per se, but complaint prioritization. The regulation is to ensure Bureau staff and institutions are aware that any student complaints about enrollment breaches will be elevated. As “the protection of the public shall be the bureau’s highest priority” (Section 94875 of the Code), ensuring that institutions follow their contracts with their students is a basic function of the Bureau’s duty, and complaints to the contrary should be prioritized. A breach of the enrollment agreement is a breach of contract between the institution and the student. An institution that “uses the wrong font size” may be in violation of the regulations as set forth by the Bureau but is not in “breach of the enrollment agreement” as it pertains to its agreements with the student, so the Bureau rejects that portion of the comment as well.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE FIRST MODIFICATION NOTICE PERIOD OF AUGUST 23, 2016 THROUGH SEPTEMBER 7, 2016.

The Bureau did not receive any comments on the modified text.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE SECOND MODIFICATION NOTICE PERIOD OF NOVEMBER 18, 2016 THROUGH DECEMBER 4, 2016.

COMMENT NO.1.1: Angela Paul stated that she “believes posting student notification on site at the campus in a public area is sufficient.” She does “not believe it is necessary to also submit the notice via email to students.”

- Response: The Bureau disagrees. First, the requirement to email or otherwise deliver the notices was not proposed in this modification. This modification was simply to clarify that the language requirements of the notices apply to the notices both physically at the institution as well as those emailed or otherwise delivered to students. Substantively, however, notices at the institution are not sufficient as not all students may see them. Students may not travel through the specific area on campus where the notice is posted or may only be on campus for a single class during the week. Further, not all campuses are the same size or type and some institutions may have satellite locations. While posting a notice in one area at the institution might provide some student protection, by also utilizing a distribution system which the institution already uses to provide other notifications to their students, student notification is significantly enhanced. In other words, it raises the chance that a student will be aware of an inspection by the Bureau, while using the same system that the institution already uses for communicating to students, and thus requires minimal effort by the institution to comply.

ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESS

No alternatives were proposed to the Bureau that would lessen any adverse economic impact on small business. See, Summary and Response to Comments, *supra*.

ALTERNATIVES DETERMINATION

The Bureau has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The amendments adopted by the Bureau are the only regulatory provisions identified by the Bureau that accomplish the goal of protecting consumers of private postsecondary education services by creating a prioritization system for the handling of complaints and compliance inspections as to recognize and act upon the most urgent situations to protect the public from harm or further harm. Except as set forth and discussed in summary and responses to comments, no other alternatives have been proposed or otherwise brought to the Bureau's attention.