

**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 12, 2016. Written comments, including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office no later than 5pm on July 12, 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, 94932.5 and 94941 of the Education Code, and to implement, interpret or make specific Sections 94932.5 and 94941 of the Education Code, the Bureau is considering changes to Division 7.5 of Title 5 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY OVERVIEW

This rulemaking action implements the requirements set the Legislature in SB 1247, Chapter 840, Statutes of 2014 related to the Bureau’s prioritization of complaints and compliance inspections.

Education Code sections 94932.5 and 94941 require the Bureau to adopt regulations to establish priorities for its inspections and other investigative resources to ensure that student protections are the highest priority and that the Bureau conducts inspections based on risk and potential harm to students. Education Code section 94941(c) requires the Bureau to consider as posing heightened risks institutions that have various characteristics, including those receiving more than 70% of their revenues from student aid funds and those with a high student default rates on student loans. The Bureau is to consider these and other stated characteristics when developing its priorities for inspection, investigation, and enforcement of institutions. The proposed regulations incorporate the legislative risk factors as well as others not in the statute in a provision related to how the Bureau will determine the priority and number of total announced and unannounced, or immediate inspections of institutions. They also clarify that in the “Notice to Students” regarding the inspection, the results of the inspection can be found on a specific page of the Bureau’s website. Furthermore, the proposed regulations require that institutions post a “Notice to Students” of upcoming announced compliance inspections and that notices regarding compliance inspections must also be posted in all the languages in which the institution is approved to teach courses.

Education Code section 94941 also requires the Bureau to adopt regulations to establish categories of consumer complaints that the Bureau is to handle on a priority basis. Education Code section 94941(e) provides that priority complaints shall include those alleging improper business acts or practices, including false or misleading statements related to certain subjects. The proposed regulations make these categories of complaints as well as other known serious allegations of high priority for the Bureau when processing complaints.

Education Code section 94932.5 now requires the Bureau to perform announced and unannounced inspections of institutions every five years, rather than every two years, and there is now no requirement that institutions be subject to an equal number of announced and unannounced inspections. The regulations proposed in this rulemaking action would amend the regulations to be consistent with those statutory revisions.

The specific regulatory proposal is as follows:

1. Repeal section 75200(a) of Division 7.5 of Title 5 of the California Code of Regulations

This repeals the section providing that the first inspection shall be an announced inspection.

2. Re-number section 75200(b) to section 75200(a) of Division 7.5 of Title 5 of the California Code of Regulations

This renumbers this subsection.

3. Repeal section 75200(c) of Division 7.5 of Title 5 of the California Code of Regulations

This repeals the section that required that an institution be subject to the same number of announced and unannounced inspections in a two year period.

4. Re-number section 75200(d) to section 75200(b) and amend new section 75200(b) of Division 7.5 of Title 5 of the California Code of Regulations

This section provides the factors for prioritizing inspections, including by incorporating those risk characteristics from section 94941(c) of the Code and the complaint priority factors from section 75300 of these proposed regulations, as well as other listed factors in this subdivision.

5. Re-number section 75200(e) to section 75200(c) and amend new section 75200(c) of Division 7.5 of Title 5 of the California Code of Regulations

This section provides for changing the inspection period from two to five years.

6. Adopt section 75210(a) of Division 7.5 of Title 5 of the California Code of Regulations

This requires that an institution which is to be the subject of a forthcoming announced compliance visit post the prescribed notice at least 5 business days prior to the inspection.

7. Adopt section 75210(b) of Division 7.5 of Title 5 of the California Code of Regulations

This is the original language that made up section 75210. It is also amended to clarify the posting requirement and provide additional information about the notice itself.

8. Adopt section 75210(c) of Division 7.5 of Title 5 of the California Code of Regulations

This section requires that all notices be posted in each language the institution is approved to teach courses.

9. Adopt section 75300 of Division 7.5 of Title 5 of the California Code of Regulations

This section provides the high priority categories for prioritizing complaints, including those from section 94941(e) of the Code and other listed factors in this section.

Anticipated Benefits of the Proposal

Institutions are required to have announced and unannounced compliance inspections by the Bureau every five years. By prioritizing these inspections based on various risk factors listed in the statute as well as these proposed regulations, the Bureau will be able to better determine which institutions should be inspected first (i.e. those at higher risk) and how frequently they should be inspected. Likewise, consumer complaints about institutions will be prioritized based on various factors from both the statute and regulations. Higher priority complaints will be dealt with first as they represent a more pronounced risk to California students.

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 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 an initial determination that the proposed regulations will not have a 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 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. The prioritization is generally an internal operation to ascertain which complaints and compliance inspections should be handled as soon as possible and which represent a lower priority. All institutions, whether large or small, are already subject to compliance inspections. It is for the safety and welfare of California citizens that high priority complaints and inspections may result in multiple inspections or investigations of institutions.

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 a system of priority to address complaints and compliance inspections, which separates urgent matters needing immediate attention to protect the health and welfare of California residents from lower priority matters which are not as impactful. 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 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 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 provision 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 at 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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Website Access <http://bppe.ca.gov>: Materials regarding this proposal can be found at <http://bppe.ca.gov/>