

Department of Consumer Affairs
Bureau for Private Postsecondary Education

Proposed Regulatory Amendments
Specific Language

Text of new language in Underline.

1. Add section 74110, subdivision (d) to read as follows (subdivisions (a)-(c) are the subject of another rulemaking file but are included for context):

§ 74110. Annual Report.

(a) The annual report required by Section 94934 of the Code shall include the information required by section 94934 for all educational programs offered in the prior calendar year.

(b) In addition to the information required by section 94934, the institution shall have annual financial statements prepared for the institution's prior fiscal year and signed under penalty of perjury, and shall submit such statements in conjunction with its annual report. The form, content and mode of preparation of financial statements shall comply with Section 74115. The Bureau may request that the institution immediately make available for inspection to a representative of the Bureau, these financial statements at the offices of the institution.

(c) An institution shall file its annual report by September 1st. The Bureau may extend the period for filing if the institution demonstrates evidence of substantial need but in no case longer than 60 days. The institution shall not change the date of its filing its annual report because of a change in the fiscal year without the Bureau's approval.

(d) The annual report shall be electronically filed by submitting the information required by section 94934 of the Code via the Bureau's website, electronically attaching, as directed, the School Performance Fact Sheet and the school catalog. An institution without the capability to submit the information electronically shall inform the Bureau not less than 45 days prior to the date the information is required by subdivision (c), and receive direction on alternative means of submission.

NOTE: Authority cited: Sections 94803, 94877, and 94934, Education Code. Reference: Sections 94932 and 94934, Education Code.

2. Add section 74112 to read as follows:

§ 74112. Uniform Data -- Annual Report, Performance Fact Sheet.

(a) Reporting periods:

(1) An Annual Report shall include data for the previous one calendar year.

(2) A Performance Fact Sheet shall be current and available not later than July 1st, and shall include data for the previous two calendar years.

(b) Completion Rates. Reporting of completion rates for an institution's Annual Report and Performance Fact Sheet shall include all cohort start dates, cohort population(s), number of students unavailable for graduation, number of graduates, and completion rate(s).

Completion rates shall be included in the Performance Fact Sheet in a format substantially similar to the chart below (dates, numbers, and other data shown are for example only):

Completion Rates (includes data for the two calendar years prior to reporting)
Name of Educational Program (XX Year Program) for use in year 20XX

Cohort Start Date	Cohort Population	Students Unavailable for Graduation*	Graduates**	Completion Rate
2/01/XX	100	2	70	71%
3/01/XX	80	0	55	69%
4/01/XX	90	N/A	N/A	N/A

* “Students unavailable for graduation” means those students who have died, been incarcerated, or called to active military duty.

** “Graduates” is the number of students who have completed 100% of the published program length.

(c) Placement Rates. Placement rate is measured six months from the graduation date of a cohort. Reporting of placement rate shall include: all cohort start dates, cohort population(s), number of graduates, graduates available for employment, graduates employed in the field and placement rate(s).

Placement rates shall be included in the Performance Fact Sheet in a format substantially similar to the chart below (dates, numbers, and other data shown are for example only):

Placement Rates (includes data for the two calendar years prior to reporting)
Name of Educational Program (XX year program) for use in year 20XX

Cohort Start Date	Cohort Population	Graduates*	Graduates Available for Employment**	Graduates Employed in the Field***	Placement Rate
2/01/XX	100	70	70	55	78%
3/01/XX	80	55	55	20	36%

* “Graduates” is the number of students who have completed 100% of the published program length.

** “Graduates available for employment” means the number of graduates minus the number of graduates unavailable for employment. “Graduates unavailable for employment” means graduates who, after graduation, die, become incarcerated, are called to active military duty, are international students that leave the United States or do not have a visa allowing employment in the United States, or are continuing their education in an accredited or bureau-approved postsecondary institution.

*** “Graduates employed in the field” means graduates who are gainfully employed within six months of graduation in a position for which the skills obtained through the

education and training provided by the institution are required or provided a significant advantage to the graduate in obtaining the position.

(d) License Examination Passage Rates. If license examination passage rates are not available from the appropriate state agency, an institution shall collect the information directly from its graduates. If an institution demonstrates that, after reasonable efforts, it is unable to obtain the examination passage information from its graduates, the institution shall report the number of students it could not contact and note in a font the same size as the majority of the data on the Performance Fact Sheet, "License examination passage data is not available from the state agency administering the examination. We were unable to collect data from [enter the number] graduates."

Reporting of license examination passage rates for the Annual Report and the Performance Fact Sheet shall include: all cohort start dates, graduation date, number of documented graduates that passed the examination, number of documented graduates that failed the examination, the number of graduates for whom data is not available. The Annual Report shall also include a description of all attempts to contact those students.

License examination passage rates shall be included in the Performance Fact Sheet in a format substantially similar to the chart below (dates, numbers, and other data shown are for example only):

Examination Passage Rates (includes data for the two calendar years prior to reporting)
Name of Educational Program (XX year program) for use in year 20XX

Start Date/ Cohort Population*	Graduation Date/ Number of Graduates	Examination Date/ Number Passed Exam	Examination Date/ Number Failed Exam	Examination Date/ Number Not Included	Examination Date/ Passage Rate
1/3/XX	12/24/XX	2/01/XX- 2/20/XX	2/01/XX	2/01/XX	2/01/XX
100	70	20	40	10	28%

*Cohort Population means the number of students that were enrolled in a program on the first class day after the cancellation period.

License examination passage date is not available from the state agency administering the examination. We were unable to collect data from 10 graduates.
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(e) Salary and Wage Information.

Salary and Wage Information shall be included in the Performance Fact Sheet in a format substantially similar to the chart below (dates, numbers, salaries, and other data shown are for example only):

Salary and Wage Information (includes data for the two calendar years prior to reporting)
 Name of Educational Program (XX year program) for use in year 20XX

Cohort Start Date	Cohort Population#	Graduates*	Graduates Available for Employment**	Graduates Employed in the Field***	Placement Rate
6/01/XX	100	70	70	55	78%
Annual Salary or Wages	\$15,000.00 - \$20,000.00	\$20,001.00 – \$25,000.00	\$25,001.00 – \$30,000.00	\$30,001.00 - \$35,000.00	\$35,001.00 – \$40,000.00
Number of Graduates Reported to be Receiving this Wage	5	40	6	3	1
6/01/XX	80	55	55	20	36%
Annual Salary or Wages	\$15,000.00 - \$20,000.00	\$20,001.00 – \$25,000.00	\$25,001.00 – \$30,000.00	\$30,001.00 - \$35,000.00	\$35,001.00 – \$40,000.00
Number of Graduates Reported to be Receiving this Wage	5	7	3	5	0

#Cohort Population means the number of students that were enrolled in a program on the first class day after the cancellation period.

* Graduates is the number of students who have completed 100% of the published program length.

** Graduates available for employment means the number of graduates minus the number of graduates unavailable for employment. Graduates unavailable for employment means graduates who, after graduation, die, become incarcerated, are called to active military duty, are international students that leave the United States or do not have a visa allowing employment in the United States, or are continuing their education in an accredited or bureau-approved postsecondary institution.

*** “Graduates employed in the field” means graduates who are gainfully employed within six months of graduation in a position for which the skills obtained through the education and training provided by the institution are required or provided a significant advantage to the graduate in obtaining the position.

(f) Documentation for all data reported shall be maintained for at least five years from the time included in either an Annual Report or a Performance Fact Sheet.

NOTE: Authority cited: Sections 94877, and 94929.8, Education Code. Reference: Section 94928, 94929, 94929.5, 94929.7, and 94929.8, Education Code.

3. Add Article 2 to Chapter 5, Enforcement and Discipline, to read as follows:

Article 2. Citations and Fines

4. Add section 75020 to read as follows:

§ 75020. Issuance of Citations.

(a) The Bureau Chief, or his or her designee, or the Director's designee, is authorized to issue citations containing orders of abatement and/or administrative fines pursuant to section 94936 of the Code against persons who are approved to operate a private, postsecondary institution that have committed any acts or omissions that are in violation of the Act or any regulation adopted pursuant thereto.

(b) The Bureau Chief, or his or her designee, or the Director's designee, is authorized to issue citations containing orders of abatement and administrative fines not to exceed \$50,000 pursuant to section 94944 of the Code against persons who are without proper approval to operate a private, postsecondary institution.

(c) In addition to the requirements of section 94936 of the Code, each citation shall inform the cited person that:

(1) if a hearing pursuant to the Administrative Procedure Act (APA) is not requested, payment of the administrative fine is due 30 days from the date of service, and shall not constitute an admission of the violation charged.

(2) if a hearing pursuant to the APA is conducted and payment of an administrative fine is ordered, the administrative fine is due 30 days from when the final order is entered;

(3) if he or she desires an informal conference to contest the finding of a violation prior to an APA hearing, the informal conference shall be requested by written notice to the Bureau within 30 days from service of the citation;

(4) failure to comply with any order of abatement within the time set forth in the citation, unless the citation is being appealed, may result in disciplinary action being taken by the Bureau; and

(5) the Bureau may enforce the administrative fine as if it were a money judgment pursuant to the California Code of Civil Procedure (beginning with section 680.010).

(d) Each citation shall be served on the cited person, in person, or by certified and regular mail at the address of record on file with the Bureau. Citations served by certified and regular mail shall be deemed "served" on the date of mailing.

(e) The sanction authorized under this section shall be separate from, and in addition to, any civil or criminal remedies.

NOTE: Authority cited: Sections 94877 and 94936, Education Code. Reference: Sections 94936 and 94944, Education Code.

5. Add section 75030 to read as follows:

§ 75030. Assessment of Administrative Fines.

Where citations pursuant to section 94936 of the Code and section 75020, subsection (a) include an assessment of an administrative fine, the fine shall be not less than \$50 or

exceed \$5,000 for each violation. Each violation shall be classified according to the nature of the violation and shall indicate the classification on the face thereof as follows:

(a) Class “A” violations shall not be less than \$2,501 nor more than \$5,000. Class “A” violations are violations that the person authorized to issue the citation has determined involves a person who, while engaged in providing private, postsecondary education, has violated a statute or regulation relating to the Act. A Class “A” violation may be issued to a person who has committed a class “B” violation who has had two or more prior, separate class “B” violations.

(b) Class “B” violations shall not be less \$1,001 nor more than \$2,500. Class “B” violations are violations that the person authorized to issue the citation has determined involves a person who, while engaged in providing private, postsecondary education, has violated a statute or regulation relating to the Act, but are less serious in nature and may include, but are not limited to, violations which could have resulted in student harm. Typically some degree of mitigation will exist. A class “B” violation may be issued to a person who has committed a class “C” violation who has two or more prior, separate class “C” violations.

(c) Class “C” violations shall not be less than \$500 nor more than \$1,000. Class “C” violations are violations that the person authorized to issue the citation has determined involve a person who has violated a statute or regulation relating to providing private, postsecondary education. A class “C” violation is a minor or technical violation, which may be directly or potentially detrimental to students or potentially impacts their education.

(d) Class “D” violations shall not be less than \$50 nor more than \$500. Class “D” violations occur when the person authorized to issue the citation has determined that the violation is a minor or technical violation, which is neither directly or potentially detrimental to students nor potentially impacts their education.

NOTE: Authority cited: Sections 94877 and 94936, Education Code. Reference: Sections 94936 and 94944, Education Code.

6. Add section 75040 to read as follows:

§ 75040. Appeal of Citations; Informal Conference.

(a) In addition to contesting a citation, in whole or in part, by requesting a hearing in writing to the Bureau, within thirty (30) days of service of the citation, pursuant to section 94936(c)(2) of the Code, the cited person may, within the same 30 days, submit a written request to the Bureau for an informal conference.

(b) The Bureau Chief, or his or her designee, or the Director, or his or her designee, shall within 30 business days from the Bureau’s receipt of a written request for an informal conference, hold an informal conference with the cited person. The 30-day period may be extended by the Bureau Chief or the Director for good cause. The informal conference may be heard by telephone.

(c) Following the informal conference, the Bureau Chief, or his or her designee, or the Director, or his or her designee, may affirm, modify, or dismiss the citation, including any fine assessed or order of abatement issued. A written order affirming, modifying, or dismissing the original citation shall be served on the cited person within 30 days from

the informal conference. If the order affirms or modifies the original citation, said order shall fix a reasonable period of time for abatement of the violation or payment of the fine.

(d) If the informal conference results in the modification of the findings of violation(s), the amount of the fine or the order of abatement, the citation shall be considered modified, but not withdrawn. Unless waived, a cited person is entitled to a hearing to contest the modified citation if he or she filed a timely request, but is not entitled to an informal conference to contest an affirmed or modified citation. If a timely request for a hearing was not filed, the decision on the citation shall be considered final.

(e) If the citation is dismissed after the informal conference, the request for a hearing, if any, shall be deemed withdrawn.

(f) Submittal of a written request for a hearing pursuant to section 94936(c)(2) of the Code, or an informal conference as provided in subsection (a), or both, stays the time period in which to pay the fine.

(g) If a written request for a hearing pursuant to section 94936(c)(2) of the Code, or for an informal conference as provided in subsection (a), or both, is not submitted to the Bureau within 30 days from service of the citation, the cited person is deemed to have waived his or her right to an informal conference and/or administrative hearing.

NOTE: Authority cited: Sections 94877 and 94936, Education Code. Reference: Sections 94936 and 94944, Education Code.

7. Add section 75050 to read as follows:

§ 75050. Compliance with Citations.

(a) If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, he or she may request an extension of time within which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement.

(b) Failure of an applicant to abate the violation or to pay the fine within the time allowed is a ground for denial or discipline of an approval to operate.

(c) If an informal conference or hearing is not requested, payment of the fine and/or compliance with any order of abatement shall not constitute an admission of the violation charged and shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

NOTE: Authority cited: Sections 94877 and 94936, Education Code. Reference: Sections 94936 and 94944, Education Code.

8. Add section 75150 to read as follows:

§ 75150. Emergency Decisions.

(a) The Bureau may make an emergency decision for temporary, interim relief, which shall be made pursuant to article 13 (commencing with section 11460.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The Bureau may make an emergency decision pursuant to subdivision (a) where there is an immediate danger to the public health, safety, or welfare that requires immediate action to protect students, prevent misrepresentations to the public, or prevent the loss of public funds or monies paid by students, including but not limited to fraud; a substantial misrepresentation in the institution's Performance Fact Sheet, school catalog, or enrollment agreement; a substantial failure to meet institutional minimum operating standards; or a substantial failure to obtain a necessary approval or permit from another agency or regulatory body, affecting public health, safety or welfare.

(c) The Bureau may order temporary, interim relief in the nature of some or all of the following measures:

(1) cease enrollment of new students;

(2) cease part or all instruction for some or all programs;

(3) cease collection of tuition or fees for some or all programs.

(d) To the extent practicable and to the extent that prior notice will not increase the likelihood of immediate danger to the public health, safety, or welfare, the Bureau shall, not less than 48-hours prior to the effective date of the emergency decision, give notice of an emergency decision to a person listed in section 71130(a) or 71350(c). Such notice may be given personally, by telephone, email, fax, or mail, and shall inform the person of the emergency decision and its effective date; the manner in which the person may request an opportunity to be heard before the Director, or his or her designee, prior to the effective date of the emergency decision; the right to judicial review of the decision; and the process by which the decision may be resolved pursuant to section 75100(c) and section 11460.60 of the Government Code.

(e) Where notice has been by telephone, unless waived by the person to whom the notice is given, the Bureau shall also provide written copies of the emergency decision and the information required by subdivision (d) prior to the effective date of the decision.

(f) Where the Bureau has given notice pursuant to subdivision (d), unless waived by the person to whom notice is given, the Bureau shall provide the opportunity to be heard before the Director, or his or her designee, at least 24-hours prior to making the emergency decision effective.

NOTE: Authority cited: Sections 94877 and 94938, Education Code; Section 11460.20, Government Code. Reference: Sections 94938, Education Code; Section 11460.20, 11460.30, 11460.40, 11460.50, 11460.60, and 11460.80, Government Code.

9. Add Article 4 to Chapter 5, Enforcement and Discipline, to read as follows:

Article 4. Compliance Inspections

10. Add section 75200 to read as follows:

§ 75200. Compliance Inspections.

(a) As part of the Bureau's compliance program, the first inspection of an institution pursuant to this section shall be an announced inspection.

(b) The Bureau shall provide not less than seven (7) days notice of any announced inspection. Notice shall be given in writing by email or mail to a person listed in section 71130(a) or 71350(c).

(c) An institution shall be subject to the same number of unannounced inspections in a two-year period as announced inspections. The relevant two-year period shall begin on the date of the first announced inspection.

(d) The Bureau shall determine the number of total compliance inspections for any institution by evaluating relevant factors including: size of the institution; number and types of programs offered; time elapsed since last inspection; history of its approval to operate; and enforcement history.

(e) The Bureau is not precluded from conducting an investigation of an institution whether or not it has conducted some or all of its compliance inspections in a two-year period.

NOTE: Authority cited: Sections 94877 and 94932.5, Education Code. Reference: Section 94932.5, Education Code.

11. Add section 75210 to read as follows:

§ 75210. Notice to Students of Results of Inspection.

In addition to any other requirement for disclosing information about an institution, the Bureau shall, at the time of any inspection, cause to be posted in a conspicuous place or places at the institution, the following notice:

Notice to Students

This institution is subject to regular compliance inspections by the Bureau for Private Postsecondary Education. Information regarding the dates of inspections conducted and the results of those inspections can be found at the Bureau's website at www.bppe.ca.gov.

This institution was last inspected on [date].

The notice(s) shall contain the date of the most recent compliance inspection. The institution shall maintain and keep unobstructed the posted notice(s) for not less than 90 days from the date of posting.

NOTE: Authority cited: Sections 94877 and 94932.5, Education Code. Reference: Section 94932.5, Education Code.