

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

Notice of Regulatory Action Concerning

**California Code of Regulations
Title 5. Education
Division 7.5. Private Postsecondary Education
Chapter 4. Institutions—General Provisions
Section 74110 Annual Reports**

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 relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office no later than 5:00pm on April 26, 2022.

PUBLIC HEARING AVAILABILITY

The Bureau has not scheduled a public hearing on this proposed action. However, the Bureau will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period. A hearing may be requested by making such request in writing addressed to the individuals listed under “Contact Person” in this Notice.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The Bureau may, after considering all timely and relevant comments, 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, 94929.5, 94929.7, 94934, and 94941 of the Education Code, and to implement, interpret or make specific Sections 94892.6, 94929.5, 94929.7, 94932, 94934, and 94941 of the Education Code, Sections 1633.2, 1633.7, and 1633.9 of the Civil Code and, Section 16.5 of the Government Code, the Bureau is considering amending section 74110 in Chapter 4 of Division 7.5 of Title 5 of the California Code of Regulations (CCR) as described in this Notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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. As part of that regulatory review and oversight, California Education Code (CEC) section 94934 requires all Bureau-approved institutions to submit an Annual Report each year, which must include specific information related to the educational programs offered by the institution, including program costs, graduation rates, and post-graduation job placement rates.

Existing law at Section 94934, subdivisions (a)(9) and (b) of the Act authorizes the Bureau to require “additional information deemed by the bureau to be reasonably required to ascertain compliance with this chapter,” and, “to prescribe the annual report’s format and method of delivery.”

Existing regulation at Section 74110 of Title 5 of the California Code of Regulations (5 CCR) sets forth the Bureau’s current requirements for filing and submission of the annual report required by CEC Section 94934. The regulation directs institutions submitting an Annual Report to electronically submit an online form provided on the Bureau’s website and attach a School Performance Fact Sheet, enrollment agreement, and a school catalog, with their electronic submission of the Annual Report, per section 74110(d).

CEC 94892.6 as added by Assembly Bill (AB) 1340 (Chiu, Chapter 519, Statutes of 2019) requires all institutions approved to operate by the Bureau to collect and annually report labor market outcome data for students who have graduated on or after January 1, 2020, in order for the Bureau to submit the data to the Employment Development Department (EDD) which will use the data to match the students with subsequent wage data for posting on the Bureau’s website. Section 94892.6(b)(2)(B) also requires the Bureau to report this data to the Cradle-to-Career Data System (CTC Data System), a statewide computer data infrastructure operated by the Government Operations Agency

that collects student and labor market outcome data to help inform policymaking decisions and improve outcomes for all students throughout the state.

Since AB 1340 was enacted into law in 2019 the Bureau has been working towards implementing its requirements that the Bureau use data collected by institutions and reported to the Bureau to gather wage data about graduates and then make aggregate data available on the Bureau's website. The Bureau has upgraded its computer system, which allows for the Bureau to accept this and other annual report information electronically via an online portal. The online portal is necessary for the most efficient and secure method of collecting and transmitting this data to EDD and/or the CTC Data System. As a result, the mechanism set forth in current regulation for reporting Annual Reports and supplemental documents will need to change.

The Bureau proposes to amend the Annual Report regulations to require that specified additional labor outcome data ("graduate identification data") be reported by approved institutions as part of the Annual Report process and through an online annual reports portal designated by the Bureau. Specifically, the Bureau proposes the following amendments to Section 74110:

Add Subsection (c) -- Reporting of Graduate Identification Data

1. Add subsection (c) to require each institution to provide graduate identification data as part of its annual report to the Bureau for each student who graduated from the institution's educational programs and as specified in proposed subsections (1)-(4);
2. Add subsection (c)(1) to require provision of graduate's name and social security number (SSN) or individual taxpayer identification number (ITIN). If the graduate does not have an SSN or ITIN, the graduate's information shall be reported as "not available";
3. Add subsection (c)(2) to require provision of date of graduation;
4. Add subsection (c)(3) to require provision of the following for each educational program in which the graduate was enrolled: (A) The federal Bureau of Labor Statistic's Standard Occupation Classification (SOC) codes for which the institution has identified that the program prepares its graduates when required for the reporting of job placement rates under subdivision (i)(3) of section 74112; (B) Educational program's name; (C) Program length, as measured in clock hours or credit hours; and, (D) Type or title of degree, diploma or certificate awarded; and,
5. Add subsection (c)(4) to require provision of the amount of federal student loan debt for the graduate, if any, as reported by the institution under subdivision (g) of section 74112.

Add Subsection (d) – Specific Timeframes for Reporting Graduate Identification Data

6. Add a title to subsection (d) as notice of the requirements for specific timeframes for reporting graduate identification data;

7. Adds subsection (d)(1) to prescribe the written notice required by Education Code Section 94892.6(b)(5), which shall inform the institution that the Director has certified that the Bureau’s information technology system has been updated and is capable of processing the data required by that Section and that the institution has 120 days from receipt of the notice to comply with this section;

8. Adds subsection (d)(2) would require the first annual report submitted by an institution that contains the graduate identification data required to be reported to include information collected on all students who graduated from January 1, 2020 through the end of the prior calendar year. The proposal would provide that subsequent annual reports need only contain information about students who graduated in the prior calendar year.

Revise subsection (f) – add new electronic filing requirements

9. Strike the requirement for submitting an online form provided on the Bureau’s website and replace it with a requirement to submit the annual report information via the Bureau’s online annual reports portal designated on the Bureau’s website at: www.bppe.ca.gov;

10. Strike the requirement to “attach” the School Performance Fact Sheet, the enrollment agreement, and the school catalog and replace it with a requirement to “upload” those documents, in addition to the specified graduate identification data;

11. Adds new conditions for electronic filings via the portal, including:

(A) requiring a responsible institution representative to register the institution for a user account by creating a user name, password, email address, and the institution representative’s first and last name, primary phone number, and address;

(B) requiring, as part of the annual report, that the institution provide standard reporting and contact information through the online portal, as specified;

(C) requiring the graduate identification data to be reported in an Excel spreadsheet (.xls or .xlsx file format), text file with a semi-colon, comma, or pipe delimiter (.csv or .txt file format);

(D) requirements for providing an electronic signature for attestation under penalty of perjury;

(E) requirements for when an annual report is considered filed with the Bureau through the online portal, including receipt of an email confirming that submission has been received; and,

(F) requirements for hard copy filing of financial statements, which includes providing or mailing hard copies directly to the Bureau's Annual Report Unit at the Bureau's principal office.

Other Proposed Changes to Annual Reporting Requirements

In addition, the Bureau proposes to update other requirements in Section 74110 to centralize all annual reporting requirements and further specify the Bureau's current requirements, as follows:

1. Revise subsection (a): add the words "this section, subsections (f)-(j) of section 74112, and," to ensure all annual reporting requirements are listed in one convenient location;

2. Add new subsection (a)(7): add to the list of the requirements, submission of a blank copy of the institution's enrollment agreement and catalog for the reporting year;

3. Revise subsection (e): add the words "of each year" to specify that the annual report is due by December 1st of each year; and,

4. Make other nonsubstantive and technical clean-up changes to add the words "of the Code" where appropriate to clarify existing statutory sections are derived from the Education Code.

Anticipated Benefits of Proposal

The changes proposed by this regulatory action will enable the Bureau to implement the legislative mandate of CEC section 94892.6 that schools collect and annually report to the Bureau data that will allow the Bureau to obtain labor market outcomes about graduates so the Bureau can post on its website program-level and institution-level statistics regarding the earnings of graduates, as well as student debt information, subsequent to completing their programs. The Assembly Floor Analysis of AB 1340, the bill that proposed CEC 94892.6, quoted supporters of the bill as saying it would, "protect students, especially veterans, low-income students, and students of color, from ineffective career training and burdensome debt. . . . [P]rotecting students from harm is vastly more effective than trying to make them whole after the harm has occurred."

While CEC section 94892.6 does not require the data reported by schools to be reported in the Annual Report, doing so simplifies the reporting process and avoids creating a new, separate reporting system for data required to be reported annually.

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 Costs/Savings in Federal Funding to the State:

This proposal will not result in a fiscal impact to the state in the form of federal funding or any cost or savings to any state agency; the regulations will not increase costs or state workload. The costs associated with implementation of AB 1340, such as the upgrade to the Bureau's information technology system and the workload increase for processing the graduate identification data collected and submitted by institutions, and to develop the Bureau's posting of the wage data from the Employment Development Department on its website, are attributable to the statutory provisions of AB 1340, as enacted at CEC section 94892.6, and not to the regulations.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which section 17561 -17630 Require Reimbursement: None

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 ability of California businesses to compete with businesses in other states.

This initial determination is based on the following facts:

Existing law requires private postsecondary educational institutions to annually submit the graduate identification data and other annual report information required by this section, including individually identifiable information for each graduate, taxpayer

identification data (SSN or ITIN), Standard Occupational Code classifications by program, and the graduate's student loan debt information. This proposal requests some additional data elements to be included related to an individual's name, program and date of graduation to aid in its reporting required by EDD. This information is already maintained by institutions and is used to complete the current annual reporting requirements generally by category and as listed in section 74110. The additional documents and/or information added to the existing reporting requirements in section 74110 would not add additional cost to the institutions because the institutions are being asked to submit data they already have in a report they are already required to submit, and include attachments in a format (Excel) that is widely used and available to the industry.

Impact on Jobs/New Business: None

Cost Impact on Private Person or Business: The Bureau is not aware of any cost impacts that a representative private person would necessarily incur in reasonable compliance with the proposed action. This information that would be required by this proposal is already maintained by institutions and is used to complete the current annual reporting requirements generally by category and as listed in section 74110. The additional documents and/or information added to the existing reporting requirements in section 74110 would not add additional cost to the institutions because the institutions are being asked to submit data they already have in a report they are already required to submit, and include attachments in a format (Excel) that is widely used and available to the industry.

Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

The Bureau has determined that the proposed regulations will not affect small businesses. Although small businesses owned by licensees of the Bureau may be impacted, the Bureau estimates that the fiscal impact would be minor and absorbable as described in the above Business Impact statement. The Bureau does not maintain data relating to the number or percentage of licensees who own a small business; therefore, the number or percentage of small businesses that may be impacted cannot be predicted.

Business Reporting: The proposed regulations impose additional reporting or other compliance requirements:

CEC sections 94934 and 94929.5 address private postsecondary educational institutions' Annual Report requirements. CEC section 94892.6 imposes additional annual reporting requirements on institutions. Proposed amendments to Section 74110

would require additional information to be included in the Annual Report for private postsecondary educational institutions, including the graduate identification data required to be reported by CEC section 94892.6, and would change the method for delivering Annual Reports to the Bureau.

Existing law at CEC section 94934, subdivisions (a)(9) and (b), authorizes the Bureau to require in Annual Reports submitted by institutions “additional information deemed by the bureau to be reasonably required to ascertain compliance with this chapter.” The Bureau has determined that it is necessary for the health, safety, or welfare of the people of the State that the regulation apply to businesses. Adding reporting requirements and/or information to the existing regulation will aid the Bureau in its compliance with CEC section 94934 reporting requirements to the EDD and CTC Data System. The Bureau will then use the graduate identification data to collect wage data on the graduates from the Employment Development Department (EDD), allowing the Bureau to post aggregated wage data for programs on its website. This will enable those researching whether to enroll in a program to compare subsequent wage outcomes in order to make an informed choice as to which programs will provide the best training for future career success.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

As explained in the business impact estimate section, 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 have the following benefits to health and welfare of California residents:

The proposal will provide the Bureau for Private Postsecondary Education with additional background information on private postsecondary educational institutions, which will enable the Bureau to post information on its website about the potential labor market outcomes from completing a postsecondary education program and the debt incurred to complete the program. This information will enable prospective students to make better choices about which program to attend

The regulatory proposal does not affect the state’s environment because the proposal only requires private postsecondary institutions to convey information about their programs to the Bureau, which should not affect the state’s environment.

The regulatory proposal would not affect worker safety because these regulations are not relevant to worker safety and are to enhance the Bureau's ability to ascertain student outcomes of attending and completing educational programs offered by Bureau-approved private postsecondary educational institutions.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

Any interested person may present statements or arguments orally if a hearing is scheduled, or in writing relevant to the above determinations during the public comment period.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of reasons for the proposed action and has available all 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 the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Bureau for Private Postsecondary Education, P.O. Box 980818, West Sacramento, CA 95798-0818.

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

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

You can 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:

Name: David Dumble
Address: P.O. Box 980818
West Sacramento, CA 95798-0818
Telephone No.: (279) 895-6091 Fax: (916) 263-1897
E-Mail Address: David.Dumble@dca.ca.gov

The backup contact person is:

Name: Yvette Johnson
Address: P.O. Box 980818
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E-Mail Address: Yvette.Johnson@dca.ca.gov

Website Access:

The Bureau's website is: <http://bppe.ca.gov>. Materials regarding this proposal can be found at <http://bppe.ca.gov/lawsregs/current.shtml>. An archive of the Bureau's prior regulatory actions can be found at <http://bppe.ca.gov/lawsregs/archive.shtml>.