

**Department of Consumer Affairs  
Bureau for Private Postsecondary Education**

**FINAL STATEMENT OF REASONS**

Hearing Date: July 21, 2015

Subject Matter of Proposed Regulations: Uniform Reporting Requirements

(3) Sections Affected: Amend sections 74110 and 74112; Adopt section 74117

**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:

The 45-Day public comment period began June 5, 2015 and ended July 20, 2015. The Bureau for Private Postsecondary Education (Bureau) held a regulatory hearing on July 21, 2015, in Sacramento, California. The Bureau received comments from seven commenters during the 45-day comment period and comments from two commenters at the hearing. The Bureau issued a 15-Day Notification of Modified Text and Documents Added to the File on October 8, 2015, and the Bureau received comments from three commenters; a second 15-Day Notification of Modified Text on January 20, 2016, and the Bureau received comments from thirty five comments; a third 15-Day Notification of Modified Text on February 12, 2016, and the Bureau received comments from fourteen commenters on-time and one late commenter; and a fourth 15-Day Notification of Modified Text on March 18, 2016, and the Bureau received comments from ten commenters on-time and three late commenters. The purpose of the modifications was to improve the overall clarity, specificity, and consistency, and in response to comments (see comments) of the proposed regulations in the specific sections and in the manners listed below:

**Section 74110(a)**

The modifications added increased specificity to the additional information to be provided with the Annual Report, including: information regarding branches and satellites and program accreditation, which allows a complete picture of accreditation at the institution; the inclusion of non-California residents and total amounts of participation in loan and grant programs, which provides a more accurate review of finances; a clarification of total percentage of income from public sources.

Section 74110(a)(2) was inadvertently not underlined but was commented on by one commenter who was assuming it was new text, thus the failure of underlining the one subsection apparently did not discourage public comment. Additionally, the subsection was included as part of the Initial Statement of Reasons.

**Section 74112(a)**

The modifications added a specific font requirement for all tables and column headings throughout the Performance Fact Sheet (PFS), which adds emphasis for students reading them.

This is an included requirement as there is no instruction sheet for the PFS. Furthermore, a specific requirement of a separate PFS for each program was also added to clarify that the fact sheets are intended to be program specific, in order to be relevant to perspective students in each program.

#### **Section 74112(b)**

The reporting requirement was modified from one to two years to be consistent with the general requirements of two calendar years' worth of data presented on a Performance Fact Sheet.

#### **Section 74112(d)**

The modifications changed the United States Department of Labor's Standard Occupation Classification (SOC) codes from the "Broad Occupation" level to the "Detailed Occupation" level.

The modifications also created a standard of hours and employment length for a part-time employment category that is required by the Private Postsecondary Education Act.

Additionally, modifications required a signed statement by the graduate that he or she chose to seek part-time employment, in order to be counted as placed. Some graduates may choose to seek part-time employment for various reasons. However, students seeking full-time employment but only obtaining part-time employment have not met their career objective and thus should not be considered gainfully employed. That is the purpose of the signed statement.

The length of employment required to be counted as gainfully employed was expanded from 21 days to 35 day during modifications in order to balance the many factors and comments surrounding this issue.

The modifications added a new category for graduates who are employed by the same employer after graduation as before enrollment. Under specific circumstances, such positions could be counted as gainfully employed, namely: where a job position changed to a different SOC code; where a statement is provided that the graduate was promoted and received a raise at least in part because of graduating the program; or where a statement is provided that completion of the program was a requirement of continued employment.

Modifications also added more examples of "reasonable" evidence of self-employment/freelance working. Additionally, modifications required that an attestation of self-employment/freelance work must be signed after graduation. Negative comments to a prior provision that part-time employees must sign their statement before enrollments provided examples of how intentions can change from enrollment through graduation. That Bureau agreed that student intentions could likely change from enrollment through graduation so the attestation should be signed after graduation when the graduate's intention for employment is immediate.

#### **Section 74112(e)**

The modifications removed the "minimum of" language, to restrict reporting to only two years of data (except as required in section 74112(h)) on the Performance Fact Sheet. This will keep the

fact sheets consistently reporting exactly two years of data, making it easier for prospective students to compare programs at different schools.

**Section 74112(f)**

Two modifications which are made in multiple subsections of section 74112 begin in this subsection. First, SB410 (Chapter 258, Statutes 2015) changed the definition of “graduate” to “on-time graduates” in section 94928 of the statute as referring to those student who complete a program within 100 percent of the program length. Subsequently, the term “on-time” was removed throughout the proposal except for where it actually refers to students graduating within 100% of the program length.

Second, where students are to initial and date certain disclosure areas, a reminder has been added for prospective students to initial only after they have had sufficient time to read and understand the information.

**Section 74112(g)**

The reporting examples for student loan/debt information were reworked into a format that is more clear and easier to follow for prospective students.

**Section 74112(h)**

A requirement for those choosing to report 150% graduation rate was added; namely, if the program is more than one year, then four calendar years of data must be reported, instead of the standard two years. Longer programs are extended further when looking at 150% graduation rate in order to capture complete and accurate date. For example, a four-year program goes up to six years when reporting 150% graduates. The extra reporting years allows graduates who might not otherwise be counted to be included, thus providing information that is more accurate to prospective students. The example table is updated to reflect this change. The word “column” is also replaced with “table” as the optional reporting of 150% is in the form of a separate table, and not a column added to the On-Time Completion Rates.

**Section 74112(i)**

The modifications changed the reference to “graduates” as that defined from a subdivision of the regulations to a section of the statute. This reflects the change in the definition based on SB 410 as mentioned above.

Modifications also added a requirement that the employment positions list required by the Code should use the “Detailed Occupation” level SOC codes that are consistent with the gainful employment requirements.

Modifications also corrected the reference within the regulations from 74112(b)(3) to 74112(d)(3) based on the renumbering from this proposal.

Modifications also added four new tables for reporting gainful employment categories. Each table provides a specific breakdown of an area of gainful employment, such as part-time vs full-

time. This provides information that is more detailed to prospective students. Instead of a basic number of how many graduates are gainfully employed, the new tables provide detailed breakdowns into the type of gainful employment attained by previous graduates in the program.

Modifications also made changes to the required self-employment/freelance worker disclosure. These changed the format to a bullet point instead of paragraph for easy reading and made specific the standard for when such a disclosure should be provided (i.e., when “majority of graduates” are categorized as self-employed/freelance workers). Whether the disclosure is necessary for a program is calculated based on the gainful employment information. If a majority of graduates is classified as self-employed/freelance workers, then this disclosure should be initialed by the student.

#### **Section 74112(j)**

There had been a modification to rename the chart and therefore the surrounding regulatory language. However, upon further review, it was decided to return the language to its original terminology as these are the same terms and words used in the statute. Keeping the same terminology in the regulations, as it exists in the statute will avoid confusion.

#### **Section 74112(l)**

SB410 (Chapter 258, Statutes 2015) modified statutory language regarding the six month period for students to be employed for the purposes of counting job placement. The regulatory modification brings the definition of “Graduates Employed in the Field” into harmony with this change. It allows that a graduate whose employment begins within the six-month period to count as job placement so long as the graduate meets the regulatory definition of gainfully employed.

#### **Section 74112(m)**

Modifications were made to specify certain areas and to address changes with the regulations. The date that employment was verified has been added to the requirements to establish that a graduate was employed for at least five weeks when using the standard fulltime and part-time definitions of gainful employment. A requirement was added to maintain all materials regarding licensing examinations and results. Generally, data used in the Annual Reports and/or Performance Fact Sheets must be maintained; this data had not been previously specified and questions had arisen whether it was to be included given the omission from the list of data to be maintained. Finally, a requirement of what data needs to be maintained under the circumstances of students unavailable for graduation or employment was added to avoid confusion among institutions.

#### **Section 74112(n)**

Modifications originally added a requirement for institutions to allow a “reasonable” time for students to read disclosures before initialing. The new text by the initialing section throughout the Performance Fact Sheet is a more specific way of addressing this issue. This text provides the reminder directly to the student, rather than having the institution determine a “reasonable” time. Comments were also received suggesting a “cooling-off” requirement before a student signed the disclosures. However, it was noted that a student’s right to cancel an enrollment agreement is a sufficient cooling-off period. The Bureau added that same information regarding a student’s right

to cancel that is in the enrollment agreement should also be given to the student along with the Performance Fact Sheet.

### **Section 74117**

AB2296 (Chapter 585 Statutes 2012) provides that institutions maintaining a website must include specific items. However, there is no requirement in the statute as to where and in what form these must exist. Therefore, as a prospective student or even just a curious member of the public searches an institution's website, these requirements could be all over the website and difficult to find. This new section requires that these statutory requirements must be provided on the website's homepage in clear and conspicuous links.

### UNDERLYING DATA.

The Bureau added and relied upon the following additional documents:

- 2010 Affordable Care Act, specifically Section 4980H(c)(4)(A) of Title 26 of the United States Code, which defines fulltime employment for the Act as 30 hours per week; and
- Accreditation Manual, 17<sup>th</sup> Edition (Effective January 1, 2012/Updated July 1, 2015); from the Accrediting Bureau of Health Education Schools, specifically Chapter V, Section I, Subsection 1.d., which requires a graduate to be employed for at least 15 days to be counted for job placement.

### BUSINESS REPORTING REQUIREMENT

The Bureau finds that these reports are necessary to apply to businesses in order to protect the health, safety, or welfare of the people of the State of California. The reports add business reporting requirements beyond what is specifically required by statute. The reports provide detailed information to individuals considering which educational programs are best for them, and as such, are necessary to protect the public's welfare.

### 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 THE INITIAL NOTICE PERIOD OF JUNE 5, 2015 THROUGH JULY 20, 2015 AND THOSE RECEIVED AT THE PUBLIC HEARING ON JULY 21, 2015.

See Addendum A

- SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE FIRST MODIFICATION NOTICE PERIOD OF OCTOBER 9, 2015 THROUGH OCTOBER 24, 2015.

See Addendum B

- SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE SECOND MODIFICATION NOTICE PERIOD OF JANUARY 21, 2016 THROUGH FEBRUARY 5, 2016.

See Addendum C

- SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE THIRD MODIFICATION NOTICE PERIOD OF FEBRUARY 13, 2016 THROUGH FEBRUARY 28, 2016.

See Addendum D

- SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE FOURTH MODIFICATION NOTICE PERIOD OF MARCH 19, 2016 THROUGH APRIL 3, 2016

See Addendum E

#### 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 ensuring that accurate and useful information is presented to the consumer prior to a decision to enroll in an institution. 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.