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MAKING RIGHTS REAL

July 20, 2015

Sent via electronic mail

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Re: Proposed Regulations for Disclosures to Prospective Students; School Performance Fact Sheets; and Annual Reports to the Bureau by Approved Institutions
(AB 2296, Hearing Date: July 21, 2015)

Dear Mr. Gray:

The undersigned organizations represent the interests of veterans, foster youth, low-income students, and people of color. These organizations were part of the effort to have the gainful employment requirements added to the California Education Code, and were strong supporters of AB 2296 in 2012. We continue to stand together to defend the rights of students at for-profit institutions, and advocate for better oversight and regulation of private postsecondary education in California.

Because increasing numbers of state and federal investigations have revealed the widespread use of deceptive and illegal practices throughout the sector, including by large accredited institutions owned by Wall Street investors,[1] strong state oversight of for-profit higher education institutions is necessary to ensure these institutions are actually preparing students to get the jobs for which their programs promise to prepared them. In the context of this rulemaking process, disclosures to prospective students pursuant to AB 2296 must be as inclusive as possible, telling the whole story about all students that finish their programs at for-profit institutions and seek employment in the field in which they were trained.

Recently, California Attorney General Kamala Harris alleged that Corinthian Colleges placed graduates in temporary employment, some for only one or two days, in order to count those students as placements.[2] Attorney General Harris also intervened in a whistle-blower lawsuit against Education Management Corp., which owns the Art Institutes and Argosy University campuses in California. The suit alleged, among other things, that the company illegally falsified job placement rates.[3] This is a consistent allegation in the numerous state and federal law enforcement investigations and actions regarding for-profit colleges throughout the country.[4]

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[1] Alia Wong, *The Downfall of For-Profit Colleges*, The Atlantic (Feb. 23, 2015), *available at* http://www.theatlantic.com/education/archive/2015/02/the-downfall-of-for-profit-colleges/385810/.
[2] See Chris Kirkham, "How a For-Profit College Created Fake Jobs to Get Taxpayer Money," HuffingtonPost.com (Dec. 16, 2013) (available at http://www.huffingtonpost.com/2013/12/16/corinthian-colleges-job-placement_n_4433800.html).
[3] *See* U.S. v. Educ. Management Corp., 871 F.Supp. 2d 433 (W.D. Pa. 2012).
[4] National Consumer Law Center, Ensuring Educational Integrity: 10 Steps to Improve State Oversight of For-Profit Schools at 38 (June 2014) (available at http://www.nclc.org/images/pdf/pr-reports/for-profit-report.pdf.)

The Legislature has mandated that the Bureau for Private Postsecondary Education (the Bureau) make the protection of the public its "highest priority."[5] To carry out this duty, the Bureau must enact strong and clear definitions for job placement rates and the other types of disclosures covered by the proposed regulations. These disclosures are critical to ensuring that students have the information they need to make educated decisions about their futures. They are also crucial to ensuring that institutions are providing the high quality of education they promise their students, as well as enabling the Bureau and the Attorney General to identify and investigate institutions that may be misrepresenting placement rates and engaging in other deceptive practices. To ensure the regulations meet these needs, our recommendations are as follows:

1. Issue regulations regarding the online posting of disclosures to potential students (p. 3)
2. Require programmatic accreditation, not just institutional accreditation, for all institutional campuses (p. 3)
3. Require annual reporting of the occupations for which institutions' programs prepare students (p. 4)
4. Require institutions sponsoring new programs to state when two years of data will be available (p. 4)
5. Use the detailed occupation or the 6-digit level code to classify graduates' employment (P. 5)
6. Increase minimum period of employment to 120 days in a single position, working at least 35 hours per week (p. 7)
7. Require institutions to meaningfully substantiate the status of self-employed graduates (P. 8)
8. "Gainful employment" definition should include earning at least the California minimum wage (p. 10)
9. Clarify how a graduate or employer(s) can confirm the graduate is gainfully employed (P. 10)
10. Require reporting of data for the past two years to include placement of all graduates (P. 11)
11. Limit reporting to the previous two years, so as to give prospective students the most accurate information (p. 11)
12. Define "total charges" to include tuition, registration fees, other institutional charges, and costs/charges incurred by students (p. 12)
13. Simplify and clarify the model disclosure form (p. 12)
14. Include in disclosure form all the reasons an institution may not be eligible for federal student aid (p. 13)
15. Strengthen and clarify self-employment/freelance worker disclosure (p. 14)
16. Other technical and clarifying changes consistent with the aforementioned recommendations (p. 15)

[5] Cal. Educ. Code § 94875.

COMMENTS TO PROPOSED REGULATIONS PURSUANT TO AB 2296

Regulations missing for implementation of Educ. Code § 94913

As currently drafted, the regulations fail to include any implementation of Ed. Code § 94913, which was added by AB 2296. That section specifies that "[a]n institution that maintains an Internet Web site shall provide on that Internet Web site all of the following:

(1) The school catalog.
(2) A School Performance Fact Sheet for each educational program offered by the institution.
(3) Student brochures offered by the institution.
(4) A link to the bureau's Internet Web site.
(5) The institution's most recent annual report submitted to the bureau."

Based on the fact that these institutions' websites currently place required information in obscure, difficult to find locations, state regulations are needed to specify the format, prominence, and proximity to other information (such as any pages mentioning the program or occupation for which the program is to prepare students, must have a direct link to the particular Performance Fact Sheet for that program). Similar types of standards are necessary to endure that the information is to be made obvious and easily accessible to students. The Bureau should rectify this omission and propose regulations to address website disclosure issues.

Section 74410(a)(3)

The proposed amendment requires institutions to include in annual reports the names of their institutional and programmatic accreditors. The information about programmatic accreditors is necessary to assist the Bureau in determining if the institution is complying with the mandates of Ed. Code sections 94897(p) and 94909(a)(16), to disclose to students if particular programs are accredited and the consequences of non-accreditation. The information on programmatic accreditors required by this proposed regulation, however, is insufficient for this goal.

For example, an institution may offer several programs, some of which have programmatic accreditation and some of which do not. It may also offer the same program at two different campuses, but the program is accredited at only one campus. For example, a education business with two campuses may offer both a surgical technician program and a medical assistant program at both campuses. While the surgical program may be accredited at one campus, there is no guarantee that it will be accredited at the second, while the medical assistant program might be accredited at the second campus, but not at the first. Unless the Bureau requires the institution to include in its annual report whether each program at each campus has programmatic accreditation and the identity of each such accreditor, it will have insufficient information to determine if particular programs at particular campuses are accredited, and consequently, whether the institution is in compliance with Ed. Code section 94897(p).

In addition, for some programs, only the students who complete while the program is accredited will qualify for employment or certification and licensing exams. Therefore, the institution should also report the effective dates of accreditation for each accredited program at each campus. Otherwise, the Bureau will not know if disclosures on any given date were accurate.

This deficiency can easily be remedied by the following change to the proposed language:

> 74110(a)(3): Name of institutional ~~and programmatic~~ accreditors~~, if applicable;~~ *for each branch and satellite campus, and for each such campus which programs have programmatic accreditation, the names of the programmatic accreditor for each such program, and effective dates for each programmatic accreditation;*

This information is extremely important and should be something the Bureau monitors as a function of its consumer protection role. In many occupations, students will only be able to find employment in the occupations for which they trained if their programs are appropriately accredited.

Section 74110(a)(7) (Proposed)

Under section 74112(d)(3)(A), the Bureau proposes that institutions must provide gainful employment data based on the occupations the institution has identified as those for which the particular program prepares graduates from that program. However, the regulations do not identify where the institution is to identify those occupations. The Bureau should include a requirement that institutions identify those occupations in their annual reports, as well as in their catalogs, and in any brochures specific to the particular program.

This section, which relates to what must be included in annual reports, should have an additional paragraph added as follows:

> 74110(a)(7): *For each program, the occupations the school identifies as those for which the program prepares graduates.*

Section 74112(b)

The proposed amendment to section 74112(b) states that institutions reporting on new programs that lack two years of data shall state on the Performance Fact Sheet when one year of data will become available. However, proposed section 74112(e)(2) states that no reporting is to be made on the Performance Fact Sheet until the institution has at least two years of data. As a result, there is no reason to disclose the date when one year of data will be available, as this is useless information that will only confuse students.

Nor is there any reason to eliminate the confusion by limiting data to just one year for new institutions. Having two years of data is much more likely to provide a valid and reliable measure than would one year, and also matches the data provided by other schools enabling more valid comparisons by the prospective student.

This section should be amended as follows:

> 74112(b): An institution offering educational programs that are too new to provide the required two years of data shall include the date the program began as well as the statement required by section 94910(e) of the Code. The Performance Fact Sheet shall also disclose the estimated date of availability for ~~one~~ *two* full years of data for those programs.

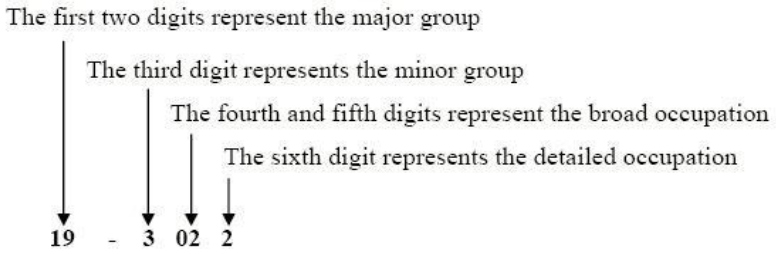
Section 74112(d)(3)(A)

This proposed amendment would allow an on-time graduate to be counted by institutions as "gainfully employed" if he or she is employed in a job classification under the Department of Labor's Standard Occupational Classification codes (SOC Codes) using the Broad Occupation level, for which the institution has identified that the program prepares its graduates. However, using this level would defeat the entire purpose of the Performance Fact Sheet. It is far too broad to provide meaningful information to students and could actually result in the provision of misleading placement rates.

The SOC Code system is described as follows:

> To facilitate classification and presentation of data, the SOC is organized in a tiered system with four levels, ranging from major groups to detailed occupations. There are 23 major groups, broken into 97 minor groups. Each minor group is broken into broad groups, of which there are 461. There are, at the most specified level, 840 detailed occupations. Detailed occupations in the SOC with similar job duties, and in some cases skills, education, and/or training, are grouped together. Each worker is classified into only one of the 840 detailed occupations based on the tasks he or she performs.[6]

The SOC Code numbers correspond to the following levels:



The proposed amendment would essentially allow institutions to count students as gainfully employed even if they are performing an occupation that is completely different from the occupation

[6] Bureau of Labor Statistics, U.S. Department of Labor, Standard Occupational Classification and Coding Structure, 2010 SOC User Guide at ii (available at http://www.bls.gov/soc/soc_2010_user_guide.pdf).

for which they trained. Here is an example that illustrates why the Broad Occupation level is too expansive to be useful to prospective students and the Bureau for the purposes of consumer protection and oversight.

One detailed occupation is the following:

> 31-9092 Medical Assistants
> Perform administrative and certain clinical duties under the direction of a physician. Administrative duties may include scheduling appointments, maintaining medical records, billing, and coding information for insurance purposes. Clinical duties may include taking and recording vital signs and medical histories, preparing patients for examination, drawing blood, and administering medications as directed by physician. Excludes "Physician Assistants" (29-1071).
> Illustrative examples: Chiropractic Assistant, Orthopedic Cast Specialist, Morgue Attendant.[7]

The Broad Occupation level that the Bureau proposes using, however, includes all of the following specific occupations:

> 31-9090 Miscellaneous Healthcare Support Occupations
> 31-9091 Dental Assistants
> 31-9092 Medical Assistants
> 31-9093 Medical Equipment Preparers
> 31-9094 Medical Transcriptionists
> 31-9095 Pharmacy Aides
> 31-9096 Veterinary Assistants and Laboratory Animal Caretakers
> 31-9097 Phlebotomists
> 31-9099 Healthcare Support Workers, All Other[8]

The use of this Broad Occupation level containing such diverse occupations would result in meaningless, if not misleading, placement rates. It would be a strange program indeed that prepared students for all of the occupations listed under the minor group, many of which require the use of completely different skills – for example, veterinary assistant, pharmacy aide, and dental assistant. Additionally, the salary ranges, program lengths, and program costs may vary widely between the programs for these different occupations.

Rather than using the SOC Broad Occupational level, the regulations should require the use of the detailed occupational code or 6-digit level to define gainful employment. For programs that prepare students for more than one detailed occupation, nothing would prevent an institution from listing more than one 6-digit occupation. But using the Broad Occupation level would, in many cases, fail

[7] See http://www.bls.gov/soc/2010/soc319092.htm.
[8] See http://www.bls.gov/soc/2010/soc319090.htm.

to provide the degree of specificity needed to truly inform students about likely jobs and whether the graduates obtain jobs in those fields.

The proposed regulation is also unduly vague in indicating where or to whom the institution has identified the occupations.

To address these problems, the proposed regulation should be revised as follows:

> 74112(d)(3)(A): The on-time graduate is employed in a job classification under the United States Department of Labor's Standard Occupational Classification codes using the ~~Broad Occupation Level~~ *Detailed Occupation or 6-digit level*, ~~for~~ which the institution has identified *in its catalog* that the program prepares its graduates *for;* ~~and~~

Section 74112(d)(3)(B)(i)

Proposed section 74112(d)(3)(B)(i) sets a number of requirements for on-time graduates who may be considered as gainfully employed. This section suggests revisions for a number of these requirements.

First, the proposed regulation set a minimum time period before a graduate's employment may count, for purposes of gainful employment data, as 21 days. This length of employment is an insufficiently short period. It does not reflect prospective students' expectations and, as a result, is likely to lead to misleading placement rates. When students enroll in a career-training program, they do so to obtain long-term permanent employment. They are therefore likely to take job placement rate disclosures at face value, assuming that they are based on graduates who obtain long-term employment. In other words, no person seeking regular employment, for example as a medical assistant, dental assistant, computer programmer, teacher, or most other careers, would consider a job that lasted a mere 21 days as a successful job placement after spending thousands, if not tens of thousands, of dollars to pay for an education represented to lead to a career.

Moreover, allowing the use of such a short period of time for gainful employment calculations will allow institutions to include temporary employment as well as graduates who are able to maintain a job for three weeks but who lose the job due to the lack of necessary skills.

The Bureau has not provided a rationale for choosing this 21-day time period in its Statement of Reasons, nor is there any basis in fact for choosing this shorter period. Corinthian, for example, reportedly paid employers to temporarily employ students for a month, so it could count them as placements.[9] This is an example of the way that a shorter period can lead to misleading placement rates.

[9] Chris Kirkham, "How a For-Profit College Created Fake Jobs to Get Taxpayer Money," HuffingtonPost.com (Dec. 16, 2013) (available at http://www.huffingtonpost.com/2013/12/16/corinthian-colleges-job-placement_n_4433800.html).

Requiring "the expectation of continued employment" does not satisfactorily rectify these problems. It's not clear how an institution or the Bureau would confirm and document that there is an "expectation of continued employment"? Nor is it clear whose expectation – the employer, the student, or the school – is being measured?

This provision should be deleted, and the 21-day period should be replaced with a longer period of employment that is more likely to indicate that a graduate has obtained permanent employment. This time period should be a minimum of 120 days, as that time period is less likely to be temporary and more likely involves a graduate has the skills necessary to maintain the type of long-term job she or he trained for.

Second, the proposed regulation does not specify whether the graduate must have been working 30 hours per week for each week in a 21-day period, or whether her/his work totaled at least 30 hours for a week during a period of 21 calendar days.

Third, the proposal provides that a graduate is employed in a "single position or concurrent aggregated single positions at least 30 hours per week…" The use of "single" with "aggregated" adds confusion. If the graduate is working in more than one position aggregated to a total of 30 hours a week, by definition, the graduate is not working in a single position.

Fourth, the Bureau has provided no rationale for a proposed minimum of 30 hours per week for a full-time job. The minimum hours should be at least 35 hours per week, as used by the Bureau of Labor Statistics and U.S. Census Bureau in its American Time Use Survey.[10]

Finally, nothing in the regulations as currently drafted prevents the school from hiring a graduate themselves or through a subsidiary in order to count him/her as a placement. The regulation should be revised to prevent this type of placement rate manipulation.

This proposed regulation should be revised as follows:

> 74112(d)(3)(B)(i): The on-time graduate is employed in a single position or concurrent aggregated ~~single~~ positions, *by an employer other than the institution or an institutional affiliate, and has worked* ~~totaling~~ at least ~~30~~ *35* hours per week for *a period of 120 days*~~21 calendar days with the expectation of continued employment~~; or

Section 74112(d)(3)(b)(ii)

This section defines when self-employed or freelance graduates are considered to be gainfully employed. However, the proposed language is inadequate to demonstrate whether a purportedly self-employed graduate is employed at all, much less to a degree that represents gainful employment. The proposed requirements would show little more than a graduate's intent to be self-employed, but

[10] Bureau of Labor Statistics, U.S. Census Bureau, American Time Use Survey User's Guide at 49 (June 2015) (available ahttp://www.bls.gov/tus/atususersguide.pdf).

no evidence that the graduate was actually able to obtain life-sustaining work as a self-employed person.

This represents a significant loophole. As an example, an unscrupulous school could easily help students obtain a fictitious business license while they are in school, then use that license to claim the graduate is self-employed even if the graduate never obtained any work at all.

To address this problem, the proposed regulation should be revised as follows:

> 74112(b)(3)(B)(ii): The on-time graduate is self-employed or working freelance**,** as ~~reasonably~~ evidence*d* by *business receipts, tax records,* ~~a business license, fictitious business name statement,~~ advertising *published in a media source after the graduation date* (other than business cards), *or* website, ~~or~~ *and the school obtains a statement* ~~an attestation~~ *that is handwritten,* signed*, and dated* by the graduate *or a statement signed by a person who retained the services of the graduate to the effect that the graduate has been engaged in* ~~of~~ self-employment or freelance work~~.~~*;*

Section 74112(d)(3)(B)(iii) (Proposed)

Education Code section 94928(e)(2) states that the Bureau "shall define…specific measures and standards for determining whether a student is gainfully employed in a full-time or part-time position…" These proposed regulations, however, do not include any measures or standards for part-time employment.

The Bureau could enact a regulation that ensures that only those students who intend on seeking part-time employment when they enroll and graduate may be considered as gainfully employed in part-time employment, as follows:

> 74112(d)(3)(B)(iii): *The on-time graduate is employed in a single position or concurrent aggregated positions by an employer other than the institution, totaling at least 20 hours per week for a period of 120 days if the school obtains statements that are handwritten, signed and dated by the graduate prior to enrollment and after program completion that he or she only intends on seeking part-time employment.*

Section 74112(d)(3)(C) (Proposed)

Students who enroll in career education programs do so because they want to improve their lives by finding skilled employment that pays higher wages. In most circumstances, they do not want to end up back in the job they had before they enrolled. The few students who want to return to their former employment typically enroll in order to obtain the skills necessary to obtain a promotion and increased pay.

The regulations should be amended to include the following provision in order to expand the definition of gainful employment to ensure that students benefit from their educations:

> 74112(d)(3)(C): *The on-time graduate is employed in an occupation with a different six digit SOC classification than applies to the occupation in which the graduate was employed before enrollment, or the employer or the graduate provides a statement to the effect that the employment after graduation was the result of a promotion with increased pay, due at least in part to completion of the program;*

Section 74112(d)(3)(D) (Proposed)

While the proposed regulations provide a standard for what types of occupations are considered gainful employment, including minimum hours per week and a minimum span of time during which positions are held, they do not provide any minimum income measure to define "gainful." The Legislature directed the Bureau to set "specific measures *and* standards for determining whether a student is gainfully employed…including self-employment…"[11] "Measures" are traditionally the metrics by which the institution are assessed against the "standards."[12] Given that the Legislature used both words we must assume it intended the Bureau to establish both minimum standards *and* metrics with which to measure the school's success.

Students who invest thousands of dollars in a career education program in order to find long-term higher paying employment should not end up earning poverty wages. Indeed, several courts have now upheld the Department of Education's interpretation to include the idea that "gainful employment" is not just any job, but one that is profitable.[13]

Gainful employment should pay a graduate, at a minimum, income that is above the California minimum wage. For self-employed individuals, the necessary remuneration may be in the form of all compensation and profits but should also pay above the California minimum wage.

The following proposed provision would incorporate this requirement:

> 74112(d)(3)(D): *The employment pays at least the California minimum wage, or if the graduate is self-employed, at least the equivalent in compensation and profits; and*

Section 74112(d)(3)(E) (Proposed)

The proposed definition of gainful employment does not currently include any explanation of what evidence is to be considered, except in connection with self-employed graduates verifying that they are self-employed. Although other provisions seem to assume how an institution is to determine if a student is employed (see section 74112(m)(4)), nowhere is this set forth explicitly.

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[11] Cal. Ed. Code 94928(e)(2) (emphasis added).
[12] David J. Deming, Claudia Goldin, and Lawrence F. Katz. *The For-Profit Postsecondary School Sector*, Journal of Economic Perspectives (2012).
[13] *See:* Association of Private Sector Colleges & Universities v. Duncan. Civil Action No. 14-1870 (JDB) (June 23, 2015); Association of Proprietary Colleges v. Duncan, 14-cv-8838 (LAK) (May 27, 2015). *Also see:* Association of Private Sector Colleges & Universities v. Duncan. Civil Action 11-1314 (RC) (March 19, 2013).

The following provision would simply make this explicit:

> 74112(d)(3)(E): *Either the on-time graduate, or the single employer or the concurrent employers, as applicable, has reported to the institution the facts necessary to comply with sections 74112(d)(3)(A) through (D).*

Section 74112(e)(1)

This proposed regulation requires an institution to report the Performance Fact Sheet data to the Bureau only for the previous calendar year. This requirement should be adequate for most graduates, now that the proposed regulation requires reporting by December 1. However, those graduates who graduated at the end of that prior year and who had to first take, pass and learn the results of a licensing exam before the six months for employment reporting began might not be included in job placement statistics even in a report filed December 1. For example, this would apply to students who were unable to take the first licensing exam available after graduation or who had to take an exam more than once before they passed, or if an examination is only offered a few times a year.

In order to have the results accurately reflect all on-time graduates, results may need to be updated to include students whose placement occurred too late to include by the December 1 date. These updated results would be available to the Bureau only if the school provided them for the year prior to the most recent previous calendar year.

This provision should therefore be amended to require institutions to report the data for the two previous years, if any data for the first of those years was not available at the time of the original reporting.

This time period would make the placement data more accurate. As a result, it would better reflect the school's success and provide a fuller picture of placement rates for students. Because institutions have to report the data to students for two years, the two year period would additionally ensure that the information reported to the Bureau was consistent with the information provided to students. The easiest way for this reporting for the institutions and for the Bureau to monitor would be to simply have the institutions include two years of data. If there were no change to some programs, the school could simply repeat the prior year's report for that year. Where there were changes, those changes could be highlighted. Alternatively, the school could be required to only report a program with updated data.

Here is a simple way to amend this provision to address this issue:

> 74112(e)(1): An Annual Report shall include data for all educational programs as defined in section 94837 of the Code for the previous *two* ~~one~~ calendar years.

Section 74112(e)(2)

This provision requires that institutions report data on the Performance Fact Sheet for a *minimum* of two years. While this may seem helpful to students, it may be used by schools deceptively. For

example, if an institution has low placement rates for the past two years, but higher placement rates before that period, it may disclose the older data, as well as the more recent two-year data, in order to confuse students, emphasize the older more favorable placement rates, or bury the lower placement rates. In addition, students are less likely to read through longer and denser disclosures with more than two years of data. Finally, the Performance Fact Sheet should focus students' attention on the most recent and most relevant graduate outcome data.

This provision should be revised to prevent this type of deception and provide simplified, relevant, and clear Performance Fact Sheets that are more likely to be read by students, as follows:

> 74112(e)(2): A Performance Fact Sheet shall be current and available not later than December 1st, and shall report data for ~~a minimum of~~ the previous two calendar years based upon the "number of students who began the program," as defined in subdivision (d)(1) of this section, and were scheduled to graduate in the reported year(s).

Section 74112(f)

This provision requires institutions to include the "total charges" for a student to complete a program within 100% of program length in its Annual Report and Performance Fact Sheet. It does not, however, define "total charges."

The following definition should therefore be added to the definitions in propose section 74112(l):

"Total Charges" is the total of all of the following: tuition, registration fees, any other fees charged by the institution, as well as any costs or charges that students incur for books, equipment, computers, software, or other educational supplies.

Section 74112(g)(1)

While the purpose of the model disclosure form is to inform students, the proposed model is too dense and difficult for most students to understand. Starting with a dense explanation of the Cohort Default Rate is likely to prevent many students from reading any further. Then, the long subsequent lines of type explaining each percentage rate with the actual rate placed at the end, completely undistinguished from the prior type, makes those important rates unnoticeable and difficult to find. Moreover, most students will not understand the significance of the word "defaulted," and that it refers to loan payments that were not just a few payments behind, but were more than 270 days (9 months) late.

These problems should be remedied by the simplified version shown below. The model disclosure form should start with a heading indicating what the form is about. Then, the long lines of type should be replaced with short descriptions, with the numeric data separated from the verbiage and highlighted.

74112(g): Loan information shall be included in the Performance Fact Sheet in a format substantially similar to the format listed below (dates and numbers are for example only):

Federal Student Loan Debt at (Name of Institution)

Percentage of students who defaulted on their federal student loans at this school:	***28%[1]***
Percentage of students enrolled in 20XX who took out federal student loans to pay for this program:	***43%***
Percentage of on-time graduates in 20XX who took out federal student loans to pay for this program:	***65%***
Average federal student loan debt of 20XX on-time graduates who took out federal student loans:	***$26,000***

[1]The percentage of students who defaulted on their federal student loans is called the Cohort Default Rate (CDR). It shows the percentage of this school's students who were more than 270 days (about 9 months) behind on their federal student loans within three years of when the first payment was due. This is the most recent CDR reported by the U.S. Department of Education.

Section 74112(g)(2)

This proposed regulation provides disclosure forms for institutions that are ineligible for federal financial aid. The proposed form assumes that the only reason an institution may be ineligible for federal student aid is that the school is unaccredited. However, this assumption is not accurate. An institution may be accredited, but still lack federal aid eligibility due to deficiencies in its programs.

The proposed disclosure should be corrected for accuracy. In addition, it should be more clearly stated and formatted, as follows:

74112(g)(2): Institutions that do not participate in federal financial aid programs shall include one of ~~two~~ *three* statements, *whichever is applicable,* in the Performance Fact Sheet in a format substantially similar to the following:

Federal Student Loan Debt

Students at (name of institution) are not eligible for federal student loans.
The U.S. Department of Education has determined that this school does not meet the criteria that would allow its students to participate in federal student aid programs.

or

Federal Student Loan Debt

Students at (name of institution) are not eligible for federal student loans.
Because this institution is not accredited, its students are not allowed to participate in federal student aid programs.

or

Federal Student Loan Debt

(Name of institution) chooses not to participate in the federal student aid programs. For this reason, students here do not have federal student loans.

Section 74112(h)

For the reasons explained in the comments to proposed section 74112(e)(2) above, this provision should be revised, as follows:

74112(e)(2): On-time Graduate: Completion Rates (includes data for ~~a minimum of~~ two calendar years prior to reporting).

Section 74112(i)(3)

For clarity, the model disclosure should use the following language in the title of the sixth column. Currently, the proposed version lacks the term, "on-time," which is used consistently elsewhere. Without that qualifier, it suggests this column refers to something different from on-time graduates:

Placement Rate % *On-time* Graduates Employed in the Field

For the reasons explained in the comments to proposed section 74112(e)(2) above, this provision should also be revised, as follows:

Job Placement Rates (includes data for ~~a minimum of~~ two calendar years prior to reporting)

Section 74112(i)(4)

As with a few of the other proposed model disclosures, this self-employment/freelance worker proposed disclosure is dense, repetitive, and provides unnecessary information. As a result, the disclosure as proposed will not achieve the Legislature's purpose of providing clear and important information that will help students to make wise choices about their higher education.

This disclosure seems designed to provide a defense to a school that orally misrepresents the job prospects of graduates, not to provide clear and prominent information to prospective students. There is no need for a specific statement here that they will be asked to provide job placement information, as that will likely be true for all graduates. In addition, the disclosure should be specific to the particular program, not for the entire school. Some institutions may offer both programs that prepare students for regular, full-time work as an employee, while others prepare students for self-employment.

The following is a revised version, showing additions and strikeouts, as well as a clean version showing format:

> ***This program is not intended to prepare you for regular, full-time employment.***
>
> The work available to graduates of this program is usually for ~~This school prepares its graduates to work in~~ freelance employment or self-employ*ment*~~ed individuals~~. ~~A defining characteristic of these two work styles is that they are often comprised of projects or short-term job opportunities.~~ This type of work may not be consistent; ~~depending on the job, project or budget,~~ *the* period of employment can range from one day to weeks to several months. ~~In addition, the h~~*H*ours worked in a day or week may be more or less than the traditional 8 hour work day or 40 hour work week. *In a* ~~A~~dditionally, ~~during periods when individuals are not working on a specific job or project, they~~ *you* can expect to spend *unpaid* time ~~on~~ expanding ~~their~~ *your* network~~s~~, advertising, ~~or~~ promoting ~~their~~ *your* services, or honing ~~their~~ *your* skills.
>
> ~~Once graduates begin to work freelance or are self-employed, they will be asked to provide documentation that they are employed as such so that they may be counted as placed for our job placement records. Students initialing this disclosure understand that some of all of this school's graduates are employed in this manner and understand what comprises this work style.~~
>
> ***This program is not intended to prepare you for regular, full-time employment.***
>
> - *The work available to graduates of this program is usually for freelance employment or self-employment.*
> - *This type of work may not be consistent.*
> - *The period of employment can range from one day to weeks to several months.*
> - *Hours worked in a day or week may be more or less than the traditional 8 hour work day or 40 hour work week.*
> - *You can expect to spend unpaid time expanding your network~~s~~, advertising, promoting your services, or honing your skills.*

Section 74112(j)

A title for the disclosure tables that clearly identifies the information as "licensing" exam pass rates would make these two disclosures clearer, as would use of the shorter synonym, "Exam."

License Exam~~ination~~ Pass~~age~~ Rates

For the reasons explained in the comments to proposed section 74112(e)(2) above, this provision should also be revised, as follows:

License Exam~~ination~~ Pass~~age~~ Rates (includes data for ~~a minimum of~~ two calendar years prior to reporting)

Section 72112(k)

For the reasons explained in the comments to proposed section 74112(e)(2) above, this provision should also be revised, as follows:

Salary and Wage Information (includes data for ~~a minimum of~~ two calendar years prior to reporting)

Section 72112(m)(3)

One clarification should be made to the proposal to ensure that the school and the Bureau have sufficient information to determine if the graduate continued in the job for the minimum period of time. The school should also document the date it confirms that a graduate was employed for the minimum required time period, including if that graduate it still employed. This can be accomplished by this minor change:

74112(m)(3): Graduate's place of employment and position, date employment began, date employment ended, ~~if applicable,~~ *or the date employment was verified, if the graduate is still employed*, actual salary and hours per week.

Conclusion

Protecting consumers requires a stronger Bureau and stronger regulations. The stakes are high. Higher education is expensive and increasingly out of reach of many lower-income and even middle-income Californians. Because of the expense of higher education, most students take on some level of debt to pay for college. Misrepresentations and false claims have severe consequences for these student borrowers. In cases where the institutions do not deliver as promised, loans for education can become an insurmountable burden rather than a benefit. If institutions get away with fraud and deception, individuals seeking to better their lives are left with nothing but worthless certificates and mountains of debt.

Thank you for considering these comments. The following organizations urge the Bureau to adopt these recommendations, to both protect vulnerable students and to ensure that they will have meaningful educational opportunities to pursue their dreams.

Sincerely,

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