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HERA

housing and economic rights advocates



October 24, 2015

*Sent via electronic mail*

Kent Gray  
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**Re: Proposed Modifications of the Regulations for Disclosures to Prospective Students; Institution Performance Fact Sheets; and Annual Reports to the Bureau by Approved Institutions (AB 2296)**

Dear Mr. Gray:

We appreciate the consumer oriented modifications made in this second draft of the Uniform Reporting Requirement regulations, and write again to urge the Bureau for Private Postsecondary Education (Bureau) to further strengthen the regulations. Utilizing tools like the Department of Labor’s Standard Occupational Classification codes and clarifying the student-directed disclosures will improve student protections and close dangerous reporting loopholes, and more is needed to enable prospective students to make educated decisions, as contemplated by AB 2296.

The following four modifications are critical 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:

- I. Increase the minimum period of employment to 90 days*
- II. Ensure verification of self-employment is robust and an accurate reflection of a graduate’s job status*
- III. Define “total charges” to include tuition, registration fees, other institutional charges, and costs/charges incurred by students*
- IV. Include the number of students eligible to take the licensing exam in the Annual Report*

Each of these requested changes is explained below.

**I. Section 74112(d)(3)(B)(i): Increase the minimum period of employment to 90 days**

In passing AB 2296, the Legislature meant to provide prospective students at for-profit institutions – students who are overwhelmingly low-income, people of color, and other vulnerable populations such as veterans and former foster youth – the information they need to assess whether a potential program will enable them to secure a brighter future for themselves and their families. No person seeking employment – for example as a medical assistant, dental assistant, computer programmer, or teacher – would consider a job that lasted a mere three weeks 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.

Though the Bureau’s modifications to § 74112(d)(3)(B)(i) help to clarify the disclosure requirements, its designation of graduates as “gainfully employed” after only 21 days on the job both defies common sense and misleads prospective students. While we understand that the Bureau is only required to consider comments which are specifically directed to the proposed modifications released on October 8<sup>th</sup>, we must reiterate the comments we submitted on July 20, 2015. From our civil rights and legal services perspective, the 21-day requirement undermines the very intent of the legislation we supported three years ago.

When students enroll in a career-training program, they do so to obtain long-term permanent employment on the basis of their newly acquired skills. Recognizing this fact, at its February 18, 2015 meeting, the Bureau Advisory Committee passed a motion advising the Bureau to use a 45 day (5 week) minimum requirement for gainful employment standards.<sup>1</sup> For additional context, when the Assembly’s policy committees passed AB 2296, they did so approving a 13 week (approximately 90 day) minimum requirement for gainful employment.<sup>2</sup> For the Bureau to now propose a standard half as strong as its own Advisory Committee recommended is essentially denying students the information they need to make informed enrollment decisions and allowing unscrupulous institutions to continue to cheat our state’s most vulnerable populations.

The 21-day minimum will allow institutions to include both graduates who are only temporarily employed as well as those who are only able to maintain a job for three weeks (but who lose the job due to the lack of necessary skills, for example) as gainfully employed. As the Bureau must be aware, there are well-documented instances of this type of manipulation already taking place. Corinthian Colleges, for example, reportedly paid employers to temporarily employ students for a month, so it could count them as placements.<sup>3</sup> This practice highlights another issue, which is that nothing in the current draft prevents an institution from hiring a graduate themselves or through a subsidiary in order to consider them employed.

The 21-days should be replaced with a 90-day period of employment, because employment lasting three months more likely indicates that a graduate has the skills necessary to maintain the type of long-term job she or he trained for. At the very minimum, the time period should be at least 45 days, as recommended by the Advisory Committee. 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.<sup>4</sup> Finally, the regulation should be revised to prevent placement rate manipulation by institutions seeking

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<sup>1</sup> Advisory Committee Meeting Minutes, February 18, 2015 (available at [http://bppe.ca.gov/about\\_us/meetings/minutes\\_20150218.pdf](http://bppe.ca.gov/about_us/meetings/minutes_20150218.pdf)).

<sup>2</sup> Assembly Bill 2296 (Amended in Assembly April 9, 2012) (available at [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201120120AB2296](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120AB2296)).

<sup>3</sup> 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](http://www.huffingtonpost.com/2013/12/16/corinthian-colleges-job-placement_n_4433800.html)).

<sup>4</sup> Bureau of Labor Statistics, U.S. Census Bureau, American Time Use Survey User’s Guide at 49 (June 2015) (available at <http://www.bls.gov/tus/atususersguide.pdf>).

to provide temporary employment either themselves or through a subsidiary in order to count the student as placed.

Accordingly, this proposed regulation should be further 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 90 calendar days 21 calendar days with the expectation of the employer for continued employment, or at least 20 hours per week for 90 21 calendar days with a statement signed by the graduate prior to enrollment stating that he or she only intends on seeking part-time employment; or*

## **II. Section 74112(d)(3)(B)(ii): Ensure verification of self-employment is robust and an accurate reflection of a graduate's job status**

With the requirement to report graduates' employment statistics, there is significant motivation for institutions to indicate that students are self-employed rather than unemployed, and our legal aid partners have time and again assisted individuals who have unknowingly signed statements declaring their intent to pursue self-employment when they have had difficulty obtaining a job. In Senator Harkin's Report, *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, a former career counselor at EDMC's job placement office testified that the institution encouraged students to pursue self-employment to lower its unemployment rates, without verifying whether these students were genuinely self-employed and supporting themselves.<sup>5</sup>

While the proposed modification to § 74112(d)(3)(B)(ii) brings the regulation into compliance with SB 410, the current 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.

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 evidenced by, but not limited to, *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 institution 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;* or

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<sup>5</sup> U.S. Senate Committee on Health, Education, Labor, and Pensions, *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success* (July 29, 2012) (available at [http://www.help.senate.gov/imo/media/for\\_profit\\_report/PartI-PartIII-SelectedAppendixes.pdf](http://www.help.senate.gov/imo/media/for_profit_report/PartI-PartIII-SelectedAppendixes.pdf)).

**III. Section 74112(f): Define “total charges” to include tuition, registration fees, other institutional charges, and costs/charges incurred by students**

While the changes to § 74112(f) do much to ensure that students will read an initial statement regarding their program’s “total charges,” the language should be clarified to indicate that the “total charges” includes the sum of institutional and noninstitutional charges, consistent with § 94870 of the California Education Code. There is currently no applicable definition of “total charges” included in Title 5 of the California Code of Regulations, Division 7.5. The Bureau has essentially defined this concept in its itemization of all institutional charges and fees in § 71800 Enrollment Agreement, as well as in the definition of “economic loss” in § 76000 Definitions. For instance, the Enrollment Agreement is required to itemize all institutional charges and fees, including tuition, registration fees, equipment, lab supplies or kits, textbooks, or other learning media, uniforms or other special protective clothing, in-resident housing, tutoring, assessment fees for transfer of credits, fees to transfer credits, Student Tuition Recovery Fund fee, and any other institutional charge or fee.

Consistent with this preexisting language, the following definition should therefore be added to section 74112(f):

*“Total Charges” is the total of all of the institutional charges and fees as set forth in Section 71800(e).*

**IV. Section 74112(j): Include the number of graduates *and* the number of graduates eligible to take the licensing exam in the Annual Report**

Our legal aid partners working with students at for-profit institutions have noticed that certain institutions regularly administer practice exams to graduating students and discourage those students who are unlikely to pass the actual licensing exam from sitting for the test. This seemingly improves the passage rates for the institution, and misleads both students and the public into believing that the institution’s program(s) actually prepare its students to take and pass the required licensing examination.

As currently drafted, § 74112(j) calls for data to be provided on the number of graduates taking the exam, the number who passed, and the number who failed. However, there is currently no data relating to how many graduates were eligible to take the exam, and chose not to for whatever reason.

As a result, the following changes should be made to the tables in section 74112(j):

*First Time License Examination Passage Rates* (includes data for a ~~minimum of the~~ the two calendar years prior to reporting)

Name of Educational Program (Program Length)

First Available Exam Date Number of Students Taking Exam <sup>1</sup>	<i>Number of Graduates Since Last Exam Date</i>	Number of <del>On-time</del> Graduates Taking Exam Exam Date <sup>2</sup>	Number Who Passed Exam	Number Who Failed Exam	Passage Rate
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License Examination Passage Rates (includes data for a ~~minimum of the~~ the two calendar years prior to reporting)

Name of Educational Program (Program Length)

Calendar Year	<i>Number of Graduates in Calendar Year</i>	Number of <del>On-time</del> Graduates Taking Exam	Number Who Passed First Available Exam Taken <sup>2</sup>	Number Who Failed First Available Exam Taken	Passage Rate <sup>3</sup>
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### Conclusion

For the Bureau to fulfill its mission of promoting and protecting the interests of California’s low-income, minority, veteran and otherwise vulnerable consumers it must promulgate and enforce regulations designed to ensure transparency, accountability, and the proliferation of only successful post-secondary options. Setting low standards and allowing for loopholes in important disclosures will only allow misrepresentations and false claims to leave more students with insurmountable debt and without meaningful job prospects.

Increasing the gainful employment timeframe, ensuring self-employment is genuine, including all relevant charges in the costs presented to prospective students, and including the number of graduates eligible to take a required exam are all important and necessary steps to ensure that California’s disclosures continue to be a national model. They are critical to empower California students to choose quality programs that will truly increase opportunities for their families and communities.

Thank you for considering our comments.

Sincerely,

Sharon Djemal  
 Director, Consumer Justice Clinic  
 East Bay Community Law Center

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Ed Howard  
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