



**Addendum to Initial Statement of Reasons**

**Hearing Date:** June 7, 2010

**Subject Matter of Proposed Regulations:** Student Tuition Recovery Fund (STRF or Fund)

**Sections Affected:**

**Adopt sections:**

76020, 76140, 76212, and 76240

**Amend sections:**

76000, 76120, 76130, 76200, 76210, and 76215

**Repeal sections:**

76010

**Amend section 76000 (Definitions)** – This section provides definitions applicable to the Student Tuition Recovery Fund (STRF or Fund).

**Factual Basis/Rationale:**

The amendments to this section were made to conform the Student Tuition Recovery Fund definitions to the language used in the Education Code. The definitions were re-ordered to be in alphabetical order for ease of reading. Specifically, changes were made as follows:

The definition of “California resident” was amended to update the reference from “correspondence instruction” to “distance education,” to be consistent with the amendments to section 71716, which provides for different ways in which a student can receive instruction that is not in real time, not just through correspondence instruction.

The Bureau added a definition for “Qualifying institution” as an approved institution or an institution subject to the provisions of Article 14, commencing with section 94923 of the Code, and section 94874.1 of the Code. Because the fund exists to cover a loss by a student at a “qualifying institution,” there had to be a clear definition of what that is. It is defined to be consistent with the statute, which specifies which institutions are subject to STRF, and includes regionally accredited institutions that are otherwise exempt from regulation under the Act.

The definition for tuition was deleted, since the definition of the base for determining the amount of the STRF assessment is now stated in terms of “institutional charges.”

In addition, a definition for “Residency Program” was added, and includes an educational program at an approved institution of which some portion of the instruction occurs as direct instruction. The Bureau determined that the fund, which was previously available to reimburse only those students who were California residents, should also be available to those students who may not consider themselves California residents but have enrolled in a program with direct instruction in the state. In the Bureau’s experience, having the Fund available to students who are neither residents nor enrolled in a program with direct instruction (requiring physical presence), e.g., a non-resident enrolled in an on-line program, made it ripe for abuse.

The definitions of “Continuing student,” “Newly enrolled student, and “Soon after” were deleted as no longer relevant to the program. The definition of “Teach-out institution” was simply clarified.

**Adopt section 76020 (Student Tuition Recovery Fund (STRF))** – This section details the purpose of the Student Tuition Recovery Fund.

Factual Basis/Rationale:

This section clarifies and makes specific Article 14 of the California Private Postsecondary Education Act of 2009. Specifically, the new section describes the existence and purpose of the fund, borrowing many provisions from section 94944 of the Reform Act, the previous Bureau’s governing Act. These new provisions, however, delete two sets of circumstances that previously could have qualified a student to make a claim: the institution’s breach or anticipatory breach of the enrollment agreement, and the commission of fraud by the institution during the solicitation or enrollment of a student into a program. It was determined that these two provisions were extremely difficult to administer, and put the Bureau in the position of litigating a contract issue between the institution and the student. Instead, the Bureau substituted this basis as a potential claim against the Fund: a student’s inability to collect a judgment entered against a qualifying institution for a violation of the Act, subject to certain preconditions. In this way, a student will be able to submit a claim if he or she suffers economic loss upon a contractual violation, but the Bureau is not in the position of asserting that violation.

In addition, the section clarifies that the fund exists to mitigate the losses suffered by a student in an educational program (as defined by the Act) who is or was a California resident or was enrolled in a residency program, instead of residents only. Although economic loss in section 76000 is defined as losses experienced by a student in an educational program, this section (and subsequent sections) clarifies that the Fund is to protect students enrolled in educational programs, which would exempt those students in something like recreational or continuing education programs, even if they are provided at a qualifying institution. While there may be some cross-over of students – that is, there may be a course required for students enrolled in an educational program that can also be taken for CE, the institution need only include as an institutional charge the cost of that course for those students enrolled in the educational program.

In this way, an institution can more easily track students and figure out assessments, since it will be clear who is enrolled in an educational program and who is not.

**Amend section 76120 (Amount of STRF Assessment)** – This section describes the Student Tuition Recovery Fund assessments.

Factual Basis/Rationale:

The amendments to this section clarify and make specific Article 14 of the California Private Postsecondary Education Act of 2009. The amount of the assessment is unchanged from the prior regulation. The section now clarifies, however, consistent with the statute, that the assessment, while collected by the institution, is to be paid by the student. In addition, this will help the student to demonstrate, if making a claim, that he or she paid into the fund, since it will be separately accounted for in the enrollment agreement. Because it is accounted for in the enrollment agreement, it will also provide clarity if the student is entitled to and requests a refund from the institution, since the assessment is non-refundable unless a 100% refund is being provided. Previously, the institution often paid the assessment on behalf of the student, which resulted in a lack of clarity in determining refunds, and claims under the Fund.

**Amend section 76130 (Collection and Submission of Assessments)** – This section details when a qualifying institution shall collect the Student Tuition Recovery Fund assessments.

Factual Basis/Rationale:

The amendments to this section clarify and make specific Article 14 of the California Private Postsecondary Education Act of 2009. Specifically, the proposed changes clarify when a qualifying institution must collect the assessments, and when the assessments must be submitted, although there was no change made to the requirement of quarterly submissions of the assessments.

In addition, changes were made to the STRF reporting form to allow for better accounting by the Bureau of the submissions by clarifying the information required, and separating out the reporting for students who may have signed enrollment agreements during the reporting period, but who had not yet made their first payments. In addition, the form clarifies that the institution must report all institutional charges, not just tuition, and that the assessment must be collected from each student enrolled in an educational program as that is defined.

**Adopt section 76140 (Record-Keeping Requirements)** – This section requires qualifying institutions to collect and maintain records to substantiate the data reported to the Bureau.

Factual Basis/Rationale:

The amendments to this section clarify and make specific Article 14 of the California Private Postsecondary Education Act of 2009. Specifically, the Bureau is requiring any and all of the information that would be necessary to ascertain whether a student is eligible for STRF reimbursement if he or she makes a claim against the Fund. Most of the language for this section

was previously contained in former section 76130 and was separated out, since the Bureau found that a section outlining just the record-keeping requirements made for greater clarity than when record-keeping was combined with assessments and reporting forms. The Bureau deleted the requirement for maintaining a Social Security number for STRF, since a student identification number will suffice for record-keeping purposes. However, the Bureau also added a requirement to maintain the student's address at time of enrollment to ensure the Bureau's ability to track the student through the educational program, and to help assess whether the student is a California resident, or enrolled in a residency program.

This section also amends the former language in that it requires that the data be maintained in an electronic format. This ensures that the Bureau will be able to easily access and search the data to better assess compliance, and to assist in the evaluation of claims filed by students under the Fund. It was the experience of the Bureau that almost all the data was maintained electronically anyway, so that no institution will be unable to comply.

**Amend section 76200 (Application for Payment)** – This section establishes the payment requirements for students seeking reimbursement under the Student Tuition Recovery Fund.

Factual Basis/Rationale:

The amendments to this section clarify and make specific Article 14 of the California Private Postsecondary Education Act of 2009. Specifically, the section lists all the information required in the application form that the Bureau needs to ascertain whether the student is entitled to reimbursement. It clarifies that the student must include a social security number or taxpayer identification number, since the Bureau is unable to issue any payments without one of those.

**Amend section 76210 (Claims Amount, Payment and Denial)** – This section details the authority of the Bureau to act on claims under the Student Tuition Recovery Fund.

Factual Basis/Rationale:

The amendments to this section clarify and make specific Article 14 of the California Private Postsecondary Education Act of 2009. Much of the language in this section was taken from section 94944 of the Reform Act. Specifically, the provisions spell out how the Bureau may reduce the amount of payment upon consideration of any benefits that a student has received in instruction given either by the closed institution before it closed, or through a teach-out available to the students of the closed institution. Accounting for both benefits that a student has received, but also for economic losses that are unrelated to instruction, is the most fair way to balance the purpose of the Fund and the need to protect its integrity. In addition, the provisions clarify that no claim can be made to any student without a social security number or taxpayer identification number.

The Bureau provided for an informal conference in the event it denies or reduces a claim submitted for reimbursement. The Reform Act provided for an APA hearing in the event of denial or reduction. The Bureau believes that an APA hearing is unwarranted as unnecessary to satisfy any due process, and is a large expense that could jeopardize the integrity of the Fund. In

addition, the Bureau believes that all conflicts regarding reimbursement can reasonably be addressed through an informal conference.

**Adopt section 76212 (Claims by Government Agency on Behalf of Students)** – This section details the entitlement to payment from the Student Tuition Recovery Fund if a government agency obtains a judgment against an institution on behalf of one or more students.

Factual Basis/Rationale:

This section clarifies and makes specific Article 14 of the California Private Postsecondary Education Act of 2009. Specifically, the Bureau included provisions for reimbursement from the Fund for a law enforcement agency that obtained a judgment against an institution on behalf of students, but is unable to collect upon that judgment. Essentially, a law enforcement agency can make a claim against the Fund in a manner similar to a student, which is consistent with the purpose of the Fund.

**Amend section 76215 (Student Tuition Recovery Fund Disclosures)** – This section requires specific Student Tuition Recovery Fund disclosures to be included on its enrollment agreement and its current schedule of student charges.

Factual Basis/Rationale:

The amendments to this section clarify and make specific Article 14 of the California Private Postsecondary Education Act of 2009. Specifically, the disclosures ensure that all institutions disclose to students in a consistent and a clear manner their rights under the Fund, what they must pay, and under what circumstances they have a right to make a claim for reimbursement. In addition, it also clarifies that the student must have been enrolled in an educational program, and that no claim can be paid to a student without a social security number or taxpayer identification number.

**Adopt section 76240 (Required Notices and Teach-Out Plan)** – This section establishes requirements concerning notices and teach-out plans when an institution closes.

Factual Basis/Rationale:

This section clarifies and makes specific Article 14 of the California Private Postsecondary Education Act of 2009. In the event that an institution plans to close, it can construct a plan to “teach-out” the remainder of instruction required to complete its educational programs in which students have enrolled. Specifically, these provisions outline how an institution must either communicate its plan for a teach-out in the event of a closure, or provide for refunds if no plan for a teach-out is made. In addition, the institution must have a closure plan, even if there is not teach-out to address important issues, such as refunds and student records. It is critical for the Bureau to know what the institution’s plan is for student records because not only do such records contain a lot of personal information, a student’s future access to his or her records could be critical for him or her to establish certain credentials or educational requirements.