

Explanation of Change Without Regulatory Effect

DEPARTMENT OF CONSUMER AFFAIRS
BUREAU FOR PRIVATE POSTSECONDARY EDUCATION

EXPLANATORY STATEMENT

SECTION 100 - CHANGES WITHOUT REGULATORY EFFECT

Title 5, California Code of Regulations

Subject Matter of Proposed Regulatory Revisions: **Delete Repealed Statute Reference and Update Authority and Reference**

Sections Affected: **Amend Title 5, California Code of Regulations, Sections 71395, 76000 and 76020**

Pursuant to Title 1, Division 1, Chapter 1, Article 2, section 100(b)(1) of the California Code of Regulations (CCR), the Bureau for Private Postsecondary Education (Bureau) submits this written statement explaining why the proposed amendments to the above listed sections of Division 7.5 of Title 5, and associated references in the CCR¹, do not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any CCR provision. These amendments are changes without regulatory effect because they:

- Delete a regulatory provision for which the statutory authority has been repealed (see 1 CCR 100(a)(4))
- Change an “authority” or “reference” citation for a regulation (see 1 CCR 100(a)(5)).

Proposed Regulatory Revisions:

1. Amend Section 71395 of Article 3 of Chapter 2 of Division 7.5 of the CCR.

A “t” is added to the word “institution” in 71395(b)(7) to correct a typo.

The Bureau proposes to amend section 71395 to delete a reference to statutory section 94874.1 of the California Education Code (Code), which previously applied to non-accredited schools offering degree programs, requiring them to obtain accreditation. This statute has been repealed by its own language.

Section 94874.1 of the Code repealed:²

¹ Unless otherwise stated, all references hereafter are to Title 5.

² (Added by Stats. 2009, Ch. 310, (AB 48).

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200920100AB48

California Education Code Section 94874.1 provided, before repeal, that:

(a) An institution that is accredited by a regional accrediting agency that is recognized by the United States Department of Education, and is not an agency described in subdivision (i) of Section 94874, is exempt from this chapter, except Article 14 (commencing with Section 94923).

(b) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

On September 25, 2020, Assembly Bill 70 (AB 70) was approved by the Governor and chaptered by the Secretary of State - Chapter 153, Statutes of 2020. The bill became effective January 1, 2021, and operative January 1, 2022, by its own provisions.³

Section 94874.1 of the Code, as currently written, stipulates that the bureau shall not verify the exemption from this chapter of, or contract for the complaint handling for, a nonprofit institution that operated as a for-profit institution during any period on or after January 1, 2010, unless the Attorney General verifies all of the requirements in section 94874.1 of the Code. This new version of section 94874.1 is entirely different than the previous section 94874.1 that was drafted into the Code as part of AB 48 (2009).

The Bureau requests amendment of section 71395 of the CCR because the statutory authority granted by section 94874.1 of the Code has been repealed as of January 1, 2016 and the Bureau is no longer authorized to verify the exemption of a school pursuant to that section without the Attorney General. CCR, title 1, section 100, subd (a) states, in part,

“Changes without regulatory effect include, but are not limited to: ... (2) deleting a regulatory provision for which all statutory ... authority has been repealed[.]”.

Thus, the Bureau’s proposed deletion of section 94874.1 in subsection 71395(a)(7) of the CCR, and removing the outdated statutory section in the references, may be considered a change without regulatory effect because they are deleting a regulatory provision for which the statutory authority has been repealed, in this case by the original language of the statute.

The Bureau also requests amendment of the Note of section 71395 because the statutory authority cited is section 94803 of the Code, which pertains to the Bureau’s authority to promulgate emergency regulations in 2010, when the California Private

³ Added by Stats. 2020, Ch. 153, (AB 70).
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB70

Postsecondary Education Act of 2009 became effective. Currently, Bureau regulatory authority is based in section 94877, which is already included in the authority cited of the Notes for this section of the CCR. The specific authority for the Bureau to verify an exemption is granted by section 94874 of the Code. CCR, title 1, section 100, subd (a) states, in part,

“Changes without regulatory effect include, but are not limited to: ... (5) changing an “authority” or “reference” citation for a regulation[.]”].

Thus, the Bureau’s proposed amendment of the Note of section 71395 of the CCR by replacing the outdated authority citing section 94803 with section 94874 of the Code in the Authority cited may be considered a change without regulatory effect because they are only changing the “authority” or “reference” citation for a regulation.

2. Amend Section 76000 of Article 1 of Chapter 6 of Division 7.5 of Title 5 of the California Code of Regulations.

The Bureau proposes amending CCR section 76000 to remove the reference to section 94874.1 of the Code in the “Notes” section. For the same reasons listed above, the Bureau requests this amendment to remove the references to section 94874.1 because the statutory authority for verifying an exemption under section 94874.1 has been repealed. Additionally, eliminating the reference to section 94874.1 of the Code would avoid confusion regarding the current text of section 94874.1, which was chaptered in 2020, but is not an appropriate reference for section 76000 of the CCR. The last modification to section 76000 was in 2017. Therefore, it is clear in this case that the reference to section 94874.1 is to the repealed statute, as it is impossible for the regulation to reference a statute chaptered in 2020 if the last time the regulation was modified was in 2017. Thus, the Bureau’s proposed deletion of section 94874.1 in the references of section 76000 may be considered a change without regulatory effect.

The Bureau also requests amendment of the Note of section 76000 because the statutory authority cited is section 94803 of the Code, which pertains to the Bureau’s authority to promulgate emergency regulations in 2010, when the California Private Postsecondary Education Act of 2009 became effective. Currently, Bureau regulatory authority is based in section 94877, which is already included in the authority cited of the Notes. The specific authority for the Bureau to administer the section 76000 is granted by section 94923 of the Code, which is also already included in the CCR section. CCR, title 1, section 100, subd (a) states, in part,

“Changes without regulatory effect include, but are not limited to: ... (5) changing an “authority” or “reference” citation for a regulation[.]”].

Thus, the Bureau’s proposed amendment of the Note of section 76000 of the CCR by removing the outdated authority citing section 94803 in the Authority cited, which may

be considered a change without regulatory effect because it is only changing the “authority” or “reference” citation for a regulation.

3. Amend Section 76020 of Article 1 of Chapter 6 of Division 7.5 of Title 5 of the California Code of Regulations.

The Bureau proposes amending CCR section 76020 to remove the reference to section 94874.1 of the Code found in the Note section, for the same reasons stated above relating to 71395 and 76000.

The Bureau also requests amendment of the Note of section 76020 because the statutory authority cited is section 94803 of the Code, which pertains to the Bureau’s authority to promulgate emergency regulations in 2010, when the California Private Postsecondary Education Act of 2009 became effective. Currently, Bureau regulatory authority is based in section 94877, which is already included in the authority cited of the Note. The specific authority for the Bureau to administer the section 76020 is granted by section 94923 of the Code, which is also already included in the CCR section. CCR, title 1, section 100, subd (a) states, in part,

“Changes without regulatory effect include, but are not limited to: ... (5) changing an “authority” or “reference” citation for a regulation[.]”.

Thus, the Bureau’s proposed amendment of the Note of section 76020 of the CCR by removing the outdated authority citing section 94803 in the Authority cited, which may be considered a change without regulatory effect because it is only changing the “authority” or “reference” citation for a regulation.

Reference

Materials

AB 48 (2009)

AB 70 (2019)

Attached