TITLE 5. BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
DEPARTMENT OF CONSUMER AFFAIRS

INITIAL STATEMENT OF REASONS

Expired Approvals

Hearing Date: No hearing scheduled.

Subject Matter of Proposed Regulations: Expired Approvals

Section(s) Affected: Article 6 of Chapter 2, of Division 7.5 of Title 5 of the California Code of Regulations (CCR)[1]; Amend sections 71475 and 71480.

Background and Statement of the Problem:

The Bureau for Private Postsecondary Education (Bureau) protects students and consumers through the regulatory oversight of California's private postsecondary educational institutions ("institutions") pursuant to the California Private Postsecondary Education Act of 2009 ("Act" – Ed. Code, §§ 94800–94950), including conducting qualitative reviews of educational programs and operating standards.

Existing law at CCR sections 71475 and 71480 outlines the renewal process for non-accredited and accredited institutions to follow when their Approval to Operate is about to expire. The current regulatory language states that an institution may renew an Approval to Operate within 6 months after expiration by filing a renewal application with the Bureau and paying a fee, and after an approval to operate has expired for more than 6 months, the approval is automatically cancelled. However, the regulations do not explicitly provide for approval to continue to operate after the date of expiration of an Approval to Operate.

Institutions may have the mistaken impression that regulations allow them to continue to operate and file a renewal for up to 6 months after the expiration of their Approval to Operate, which is not the intent of the regulation. In 2022, approximately one-third of all renewal applications received came after the date of expiration and a date six months later.[2] To address this issue of institutions not properly renewing their Approval to Operate, the Bureau proposes to amend CCR sections 71475 and 71480 and clarify the requirements and process institutions must follow when their Approval to Operate is about to expire and they wish to continue to operate with approval from the Bureau.

[1] Unless otherwise noted, all references to the CCR hereafter are to Title 5.
[2] See Underlying Data – Item 1 – Excerpt of Bureau's Advisory Committee meeting on November 8, 2023 (October 30, 2023 Memorandum to Advisory Committee Members)

This proposal:

- Deletes the text in section 71475 subsections (hh) through (jj), and re-letter the subsequent subsections accordingly.
- Add new text in section 71475(hh) outlining that:
    - If the Bureau receives a complete application (for renewal of an approval to operate for Non-Accredited Institutions) under CCR 71475 from an institution on or before 30 calendar days after the expiration of the approval, a valid approval to operate shall continue until the Bureau has acted upon the renewal application.
    - If the Bureau does not receive a complete renewal application on or before 30 calendar days after expiration of the approval to operate, the institution's approval to operate shall terminate by operation of law on the 31st day[3] after expiration of its approval to operate.
    - An institution continuing to operate more than 30 calendar days beyond expiration will be subject to citation for operating without approval.
- In section 71480, delete the text in subsections (f) through (h), and re-letter the subsequent subsections accordingly.
- Add new text in section 71480(f) outlining that:
    - If the Bureau receives a complete application (for renewal of an approval to operate for Accredited Institutions) from an institution prior on or before 30 calendar days after the expiration of the approval, a valid approval to operate shall continue until the Bureau has acted upon the renewal application.
    - If the Bureau does not receive a complete renewal application or before 30 calendar days after expiration of the approval, the institution's approval to operate shall terminate by operation of law on the 31st day after expiration of its approval to operate.
    - An institution continuing to operate more than thirty calendar days beyond expiration will be subject to citation for operating without approval.

Anticipated benefits from this regulatory action:

This regulatory proposal benefits the welfare of California consumers because it clarifies the procedures of institution approval renewal, helping ensure that institutions are aware whether they have properly renewed their approval to operate. Some institutions have not submitted their renewal application until well after their Approval to Operate has expired, possibly under the mistaken impression that the six-month window after expiration in which the renewal can be submitted is to be taken as a de facto extension of their Approval to Operate.

This regulation will allow the Bureau to enforce provisions of the Act and further the Bureau's mission of consumer protection for students seeking educational services from postsecondary institutions by helping to ensure that the institutions they are attending are

[3] All references to days are calendar days.

approved institutions and comply with all legal requirements for operating an approved institution in California. Institutions will not have to pay late fees for applications received more than 30 days beyond the date of expired approvals, because then they will simply need to seek a new approval to operate. Institutions benefit from having clearer regulatory language for Bureau standards surrounding requirements for renewals for an approval to operate.

Specific purpose of, and rationale for, each adoption, amendment, or repeal:

The changes proposed by this regulatory package are as follows:

1. **Amend Section 71475, Article 6, Chapter 2, Division 7.5 of the CCR**

71475. Renewal of an Approval to Operate for a Non-Accredited Institution; Cancellation of an Approval to Operate

Proposed Change: In section 71475, delete the text in subsection (hh).

Purpose: The Bureau is revising the process by which institutions submit renewals for an Approval to Operate. Under the new process, an institution may submit a renewal either on time (before the expiration of the Approval to Operate) or within 30 days after the expiration of the Approval to Operate. After that time, a renewal will not be accepted. Since renewals will no longer be accepted if submitted late, the Bureau will no longer collect late fees for these applications and proposes deleting the existing regulatory subsection providing for late fees for a tardy submission of a renewal of an Approval to Operate.

Rationale: Section 71475 (hh) establishes late fees for renewals of Approval to Operate if the renewal is submitted either more than 30 days after the expiration of the Approval to Operate (25% late fee) or more than 90 days after the expiration of the Approval to Operate (35% late fee).

It is necessary to delete (hh) because the newly proposed text will not allow an institution to submit a renewal of an Approval to Operate more than 30 days after the expiration of the Approval to Operate. At that time, the Approval to Operate is terminated. The Bureau proposes deleting the references to late fees for submitting a renewal to operate to avoid any confusion with the new language.

Proposed Change: In section 71475, delete the text in subsection (ii).

Purpose: Section 71475(ii) provides that a non-accredited institution may continue to operate after the expiration of its Approval to Operate so long as the Bureau has received a completed renewal application prior to the expiration of the approval to operate.

Rationale: Since the Bureau is revising the process by which institutions submit renewals for an Approval to Operate and incorporates portions of previous (ii) in its language, the prior language is redundant, and it is necessary to delete this subsection.

Proposed Change: In section 71475, renumber the subsection (jj) as (hh) and delete the text of the entire subsection, "An approval to operate that has expired may be renewed at any time within 6 months after its expiration on filing of an application for renewal and, as a condition precedent to renewal, payment of all accrued and unpaid renewal fees, late payment penalty fees prescribed in subsection (e) of this section, and any other fees that would have been due in order to renew timely. After an approval to operate has expired for more than 6 months, the approval is automatically cancelled and the institution must submit a complete application pursuant to section 71100, meet all current requirements, and pay all fees that would have been due in order to timely renew, in order to apply for approval."

Purpose: The existing language in current section 71475(jj) is potentially confusing and could lead institutions to mistakenly believe that their Approval to Operate may be extended past the five-year expiration date for up to six months if they do not apply for renewal in a timely manner. The Bureau proposes deleting the existing language and replacing it with language that clarifies that an institution's Approval to Operate expires at the end of the five-year term for an approval, but now with a 30-day grace period. The Bureau also proposes eliminating the confusing language about an approval being "cancelled" (a term not defined in statute or regulation) by operation of law and replace it with a new process by which an institution's approval is terminated by operation of law if the institution has not submitted a renewal application within 30 days of the date its Approval to Operate expires.

Rationale: The deletion of prior text is necessary because the Bureau is no longer allowing a 6 month-renewal period, as an increasing number of institutions did not submit their renewal application to operate until after their Approval to Operate expired, as demonstrated by a third of renewal applications in 2022 coming in between the institution's date of expiration and a date six months later.

A potential reason for the increase in tardy renewal submissions is the language in existing CCR section 71475(jj), which states that "an approval to operate that has expired may be renewed at any time within 6 months after its expiration…" This language, which was intended only to provide a limited grace period for institutions that experienced some delay in preparing its renewal application, is seen by some institutions as extending the period of approval by up to six months, when in fact it does *not* authorize continued operation after the date of expiration and merely allows belated submission of the renewal application.

Therefore, the Bureau proposes to delete the entirety of the text of section 71475(jj) and replace it with the proposed text that permits an institution to submit a renewal application without penalty for up to 30 calendar days after the expiration of the institution's Approval to Operate and allows institutions to continue operating during this 30-day period.

Proposed Change: Add to 71475(hh) "Provided that a complete renewal application under CCR section 71475 is received by the Bureau on or before 30 calendar days after the expiration of the approval, a valid approval to operate shall continue until the Bureau has acted upon the renewal application."

Purpose & Rationale: The new text contains a provision that was previously contained in subsection (ii) that permits an institution that submits a complete application for renewal to continue to operate until the Bureau renders a decision on the renewal application.

It is necessary to specify that the renewal application must be "complete" to avoid a situation where an institution attempts to extend their Approval to Operate indefinitely by submitting an application lacking in some aspect, requiring the Bureau to notify the institution of the application's deficiency and then wait for the institution to submit a revised application, ad infinitum.

A 30-day grace period is an appropriate amount of time for institutions that experienced some delay in preparing its renewal application, and establishes a timeframe consistent with other Bureau processes, such as appeal rights to Bureau decisions, timeframes in which the Bureau responds to institution requests, or substantive changes that institutions report to the Bureau. 30 days is also the timeline for the Bureau to review applications per Ed. Code, § 94890.

The proposed language includes language similar to that in the current subsection 71475(ii), which states that a valid approval will continue to be valid so long as the Bureau has received a completed renewal application prior to expiration of the approval. The proposed language in what will now be section 71475(hh) extends this provision to renewal applications received by the Bureau within the 30-day period after the expiration of the Approval to Operate, in addition to those received prior to expiration.

Proposed Change: Add to 71475(hh) "If a complete renewal application under CCR section 71475 is not received by the Bureau on or before 30 calendar days after expiration of the approval to operate, the institution's approval to operate shall terminate by operation of law on the 31st calendar day after the expiration of the approval to operate."

Purpose & Rationale: On the 31st calendar day past the date on which the Approval to Operate expires, the institution's Approval to Operate will terminate by operation of law. At that point, there is no argument that can be made for the approval to continue to be in effect, because the Bureau will automatically terminate the approval as it cannot allow an institution to continue operating with expired approval. The Bureau issues institutions an Approval to Operate, which is active for a period of five years pursuant to California Education Code section 94889. If terminating an expired approval to operate required the

Bureau to take enforcement action, similar to what is required in cases where the Bureau seeks to revoke an approval to operate due to violations of the law, the time-limited nature of the approval to operate would be nullified and would place the Bureau's regulations at odds with a plain reading of the statute. It is necessary, therefore, for the approval to operate to terminate by operation of law when the approval has been expired for more than 30 calendar days.

The intent of the proposed text is to clarify the regulations. Explicitly stating that the approval will terminate by operation of law on the 31st calendar day after an institutions approval to operate has expired if no renewal application has been received is a clear manner in which the consequences of not submitting a timely renewal can be communicated to institutions. If the institution continues to operate after that date, it will be subject to citation for operating without approval. Institutions that allow their Approval to Operate to expire in such a manner will have to submit a new Approval to Operate application.

<u>Proposed Change:</u> Add to 71475(hh) "An institution continuing to operate more than 30 calendar days beyond expiration will be subject to citation for operating without approval."

<u>Purpose & Rationale:</u> The proposal contains language that, "An institution continuing to operate more than 30 calendar days beyond expiration will be subject to citation for operating without approval" to clarify what the consequences are of operating past the expiration date of an Approval to operate. As many institutions currently believe that operating past their approval's expiration date is permitted, the Bureau wants to make sure that going forward all institutions know that they will be cited if they engage in this conduct in the future.

<u>Proposed Change</u>: Re-letter the subsequent subsections accordingly.

<u>Purpose & Rationale:</u> The subsequent subsection of CCR section 71475 is being renumbered to account for the deletion of the text of subsections (hh) and (ii), so the previous (jj) will now be (hh) and the previous (kk) will now be (ii). This ensures consistent lettering throughout the regulations.

<u>Proposed Change</u>: Remove the statutory Section 94931 from the references in CCR 71475.

<u>Purpose and Rationale</u>: Removing 94931 from the references in 71475 is intended to remain consistent between regulatory and statutory language. The Bureau is removing late fees for renewal applications because it is requiring institutions to apply for a renewal application within 30 calendar days of its approval to operate expiring. Rather than a late fee, the Bureau will now require an institution to simply apply for an Approval to Operate. Therefore, the statutory section for late fees is no longer relevant as a reference for this CCR section.

2. **Amend Section 71480, Article 6, Chapter 2, Division 7.5 of the CCR**

71480. Renewal of an Approval to Operate for an Accredited Institution.

Proposed Change: In section 71480, delete the text in subsection (f).

Purpose: The Bureau is revising the process by which institutions submit renewals for an Approval to Operate. Under the new process, an institution may submit a renewal either on time (before the expiration of the Approval to Operate) or within 30 days after the expiration of the Approval to Operate. After that time, a renewal will not be accepted. Since renewals will no longer be accepted if submitted beyond 30 days, the Bureau will no longer accept late fees and proposes deleting the existing regulation providing for late fees for the submission of a renewal of an Approval to Operate.

Rationale: CCR section 71480 (f) establishes late fees for renewals of Approval to Operate if the renewal is submitted either more than 30 days after the expiration of the Approval to Operate (25% late fee) or more than 90 days after the expiration of the Approval to Operate (35% late fee).

It is necessary to delete (f) because the newly proposed text will not allow an institution to submit a renewal of an Approval to Operate more than 30 days after the expiration of the Approval to Operate. At that time the Approval to Operate is terminated. The Bureau proposes deleting the references to late fees for submitting a renewal to operate to avoid any confusion with the new language.

Proposed Change: In section 71480, delete the text in subsection (g).

Purpose: Section 71480(g) provides that a non-accredited institution may continue to operate after the expiration of its Approval to Operate so long as the Bureau has received a completed renewal application prior to the expiration of the approval to operate.

Rationale: Since the Bureau is revising the process by which institutions submit renewals for an Approval to Operate and incorporates portions of previous (g) in its language, the prior language is redundant, and it is necessary to delete this section.

Proposed Change: In section 71480, renumber the subsection (h) as (f) and delete the entire text in the subsection, "An approval to operate that has expired may be renewed at any time within 6 months after its expiration on filing of an application for renewal and, as a condition precedent to renewal, payment of all accrued and unpaid renewal fees, late payment penalty fees prescribed in subsection (f) of this section, and any other fees that would have been due in order to renew timely. After an approval to operate has expired for more than 6 months, the approval is automatically cancelled and the institution must submit a complete application pursuant to section 71390, meet all current requirements, and pay all fees that would have been due in order to timely renew, in order to apply for approval."

Purpose: The existing language in current section 71480(h) is confusing and could lead institutions to mistakenly believe that their Approval to Operate may be extended past the five-year expiration date for up to six months if they do not submit an application for renewal in a timely manner. The Bureau proposes deleting the existing language and replace it with language that clarifies that an institution's Approval to Operate expires at the end of the five-year term for an approval, but now with a 30-day grace period. The Bureau also proposes to eliminate the confusing language about an approval being "cancelled" (a term not defined in statute or regulation) by operation of law and replace it with a new process by which an institution's approval is terminated if the institution has not submitted a renewal application within 30 days of the date its Approval to Operate expires.

Rationale: The change being made in section 71480 is essentially identical to that being made in section 71475, except it applies to the renewal process for institutions overseen by an accrediting organization instead of those institutions that are not accredited. The deletion of prior text is necessary because the Bureau is no longer allowing a 6 month-renewal period, as an increasing number of institutions did not submit their renewal application to operate until after their Approval to Operate expired, as demonstrated by a third of renewal applications in 2022 coming in between the institution's date of expiration and a date six months later.

A potential reason for the increase in tardy renewal submissions is the language in existing CCR section 71480(h), which states that "an approval to operate that has expired may be renewed at any time within 6 months after its expiration…" This language, which was intended to provide a limited grace period for institutions that experienced some minor issue in preparing its renewal application, is seen by some institutions as extending the period of approval by up to six months, when in fact it does not authorize continued operation after the date of expiration and merely allows belated submission of the renewal application.

Therefore, the Bureau proposes to delete the entirety of the text of section 71480 (h) and replace it with the proposed text that permits an institution to submit a renewal application without penalty for up to 30 calendar days after the expiration of the institution's Approval to Operate and allows institutions to continue operating during this 30-day period.

Proposed Change: Add to 71480(f) "Provided that a complete renewal application under CCR section 71480 is received by the Bureau on or before 30 calendar days after the expiration of the approval, a valid approval to operate shall continue until the Bureau has acted upon the renewal application."

Purpose & Rationale: The new text contains a provision that was previously contained in subsection (g) that permits an institution that submits a complete application for renewal to continue to operate until the Bureau renders a decision on the renewal application.

It is necessary to specify that the renewal application must be "complete" to avoid a situation where an institution attempts to extend their Approval to Operate indefinitely by submitting an application lacking in some aspect, requiring the Bureau to notify the institution of the application's deficiency and then wait for the institution to submit a revised application, ad infinitum.

A 30-day grace period is an appropriate amount of time for institutions that experienced some delay in preparing its renewal application, and establishes a timeframe consistent with other Bureau processes, such as appeal rights to Bureau decisions, timeframes in which the Bureau responds to institution requests, or substantive changes that institutions report to the Bureau. 30 days is also the timeline for the Bureau to review applications per Ed. Code, § 94890. Improved communication technology such as email and the internet make the need for a grace period as long as six months superfluous because the Bureau sends several notices and communication attempts prior to an institution's approval expiring. Therefore, the Bureau is proposing to delete the entirety of the text of section 71480 and replace it with the proposed text that permits an institution to submit a renewal application without penalty for up to 30 days after the expiration of the institution's Approval to Operate.

The proposed language includes language similar to that in the current subsection 71480(g), which states that a valid approval will continue to be valid so long as the Bureau has received a completed renewal application prior to expiration of the approval. The proposed language in what will now be section 71480(f) extends this provision to renewal applications received by the Bureau within the 30-day period after the expiration of the Approval to Operate, in addition to those received prior to expiration.

Proposed Change: Add to 71480(f) "If a complete renewal application under CCR section 71480 is not received by the Bureau on or before 30 calendar days after expiration of the approval to operate, the institution's approval to operate shall terminate by operation of law on the 31st calendar day after the expiration of the approval to operate."

Purpose & Rationale: On the 31st calendar day past the date on which the Approval to Operate expires, the institution's Approval to Operate will terminate by operation of law. At that point, there is no argument that can be made for the approval to continue to be in effect, because the Bureau will automatically terminate the approval as it cannot allow an institution to continue operating with expired approval. The Bureau issues institutions an Approval to Operate, which is active for a period of five years pursuant to California Education Code section 94889. If terminating an expired approval to operate required the Bureau to take enforcement action, similar to what is required in cases where the Bureau seeks to revoke an approval to operate due to violations of the law, the time-limited nature of the approval to operate would be nullified and would place the Bureau's regulations at odds with a plain reading of the statute. It is necessary, therefore, for the approval to operate to terminate by operation of law when the approval has been expired for more than 30 calendar days.

The intent of the proposed text is to clarify the regulations. Explicitly stating that the approval will terminate by operation of law on the 31st calendar day after an institutions approval to operate has expired if no renewal application has been received is a clear manner in which the consequences of not submitting a timely renewal can be communicated to institutions. If the institution continues to operate after that date, it will be subject to citation for operating without approval. Institutions that allow their Approval to Operate to expire in such a manner will have to submit a new Approval to Operate application.

Proposed Change: Add to 71480(f) "An institution continuing to operate more than 30 calendar days beyond expiration will be subject to citation for operating without approval."

Purpose & Rationale: The proposal contains language that, "An institution continuing to operate more than 30 calendar days beyond expiration will be subject to citation for operating without approval" to clarify what the consequences are of operating past the expiration date of an Approval to operate. As many institutions currently believe that operating past their approval's expiration date is permitted, the Bureau wants to make sure that going forward all institutions know that they will be cited if they engage in this conduct in the future.

Proposed Change: Re-letter the subsequent subsections accordingly.

Purpose & Rationale: The subsequent subsection of CCR section 71480 is being renumbered to account for the deletion of the text of subsections (f) and (g), so the previous (h) will now be (f) and the previous (i) will now be (g). This ensures consistent lettering throughout the regulations.

Proposed Change: Remove the statutory Section 94931 from the references in CCR 71480.

Purpose and Rationale: Removing 94931 from the references in 71480 is intended to remain consistent between regulatory and statutory language. The Bureau is removing late fees for renewal applications because it is requiring institutions to apply for a renewal application within 30 calendar days of its approval to operate expiring. Rather than a late fee, the Bureau will now require an institution to simply apply for an Approval to Operate. Therefore, the statutory Section for late fees is no longer relevant as a reference for this CCR section.

Underlying Data

Technical, theoretical, or empirical studies, reports, or documents relied upon:

1. The provisions of this proposed regulation were discussed at the Bureau for Private Postsecondary Education's Advisory Committee meeting on November 8, 2023. The text of what was presented is at pages 81 to 84 of the meeting materials located at https://www.bppe.ca.gov/about_us/meetings/materials/20231108_acm_mm.pdf - Relevant excerpt of October 30, 2023 Memorandum to Advisory Committee Members.

2. The summary of the discussion of the proposal can be found in the meeting materials of the Bureau for Private Postsecondary Education's Advisory Committee's meeting on February 7, 2024, located at: https://www.bppe.ca.gov/about_us/meetings/materials/20240202_materials.pdf at page 14 of 99.

Business Impact:

The Bureau has made the initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses including the inability of California businesses to compete with businesses in other states.

This initial determination is based on the fact that institutions will have to follow the exact same procedure for renewing their Approval to Operate under the proposed regulations as they do under the current regulations.

Because institutions will not have to make any changes to their renewal process, the proposed regulations are not anticipated to result in any additional economic costs on California businesses.

According to Bureau data, an average of 13 institutions submit renewal applications beyond 30 days each year and are required to pay approximately $7,350 in late penalty fees.

The proposed regulations do not allow for late fees for a renewal application. As a result, schools will no longer pay late penalty fees.

Economic Impact Assessment:

This Bureau has determined that this regulatory proposal will have the following effects:

It will not create or eliminate jobs within the State of California because the regulations are intended to better ensure private postsecondary education institutions renew their registration in a timely manner.

It will not create new business or eliminate existing businesses within the State of California because the regulations are intended to better ensure private postsecondary education institutions renew their registration in a timely manner.

It will not affect the expansion of businesses currently doing business within the State of California because the regulations are intended to better ensure private postsecondary education institutions renew their registration in a timely manner.

This regulatory proposal does not affect the health and welfare of California residents because it does not relate to health and welfare.

This regulatory proposal does not affect worker safety because it does not involve worker safety.

This regulatory proposal does not affect the state's environment because it does not involve the environment.

According to Bureau data, an average of 13 institutions submit renewal applications beyond 30 days each year and are required to pay approximately $7,350 in late penalty fees.

The proposed regulations do not allow for late fees for a renewal application. As a result, schools will no longer pay late penalty fees.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No such alternatives have been proposed, however, the Bureau welcomes comments from the public.