

California Jumps in With Sweeping Regulatory, Statutory Proposals Affecting VA Benefits, Other Issues

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With the perceived loosening of regulatory controls at the federal level, many states are stepping in with aggressive legislative and regulatory action. Leading the charge is California, where a legislative package of seven new bills has been introduced. We are doing a series of blog posts on these bills, as they may be indicative of a trend that we will see in other states and bear close watching.

Also in the mix is a proposed regulatory change currently open for comment that would impact institutions approved by the California State Approving Agency for Veterans Education (CSAAVE). We start with this proposal because it is only open for comment until March 9.

CSAAVE

The California agency responsible for approving institutions to provide VA funds to students, CSAAVE, has issued a [notice of proposed rulemaking](#) that is in the final week of public comment.

This proposed rule updates the definitions relating to, among other things, degree types, accreditation, student outcomes and student aid programs. The proposed rule also creates new conditions for CSAAVE approval, including the submission of student outcomes information, licensing rates, cohort default rates and the state of an institution's participation in the Title IV federal student financial aid programs.

The headliner for some institutions is new language that would bar them from participation in the state-administered VA programs if they have a failing "composite score" under the U.S. Department of Education financial formula, despite the option to post a letter of credit and to satisfy one of the department's alternative financial tests. Many institutions that are able to continue to participate in the Title IV federal aid programs by satisfying the department via other pathways, would find that they are excluded from the VA programs. This could result in a loss of program access for veteran students, as well as seriously damaging an institution's financial situation.

The proposed rule does not suggest any alternatives or any timeline to phase in this new requirement.

We encourage institutions currently approved by CSAAVE to carefully review the proposed rule and submit comments as directed by 5:00 PM PST on March 9. This is a proposal where informed public comment could really make a difference. Please feel free to contact any of us to discuss the particulars.

California Legislature

On February 22, the California Assembly introduced seven new bills (AB1340 through 1346) that would substantially impact institutions operating in California under the approval of or through registration with the Bureau for Private Postsecondary Education (BPPE).

These bills, all authored by the same group of six Democrats, are organized as a package targeting the proprietary sector. These bills have not yet been assigned to committee, but we expect the majority of the bills will start in the Assembly Higher Education Committee, where they will come under debate and likely major revision. At the moment, there are no comparable bills on the California Senate side.

Note the potentially broad impact of any bill that governs institutions that have either BPPE authorization or registration. The reference to registration captures many out-of-state institutions that enroll California residents in their online programs. The bill impacting the registration process for out-of-state schools ([AB1344](#)) will be discussed in a future blog post, but the preview is that it would require registered institutions to comply with the entirety of the California Private Postsecondary Education Act as it relates to California residents, which means the bills described here would potentially also impact those out-of-state institutions. We strongly encourage institutions operating in California under BPPE authorization or registration to monitor these bills as the legislative process moves forward.

We plan to do several posts in the coming days to provide an overview of this new wave from California, so watch this space. Today we recap two of the seven. We are beginning with these two bills because they have the potential to force the closure of a significant swath of institutions if they are passed as currently drafted.

[AB1340](#)

This bill would prohibit an institution subject to the California Private Postsecondary Education Act (CPPEA) that is offering a program that is intended to “prepare a student for gainful employment,” as defined in the federal regulations, from enrolling students in any program that does not meet the federal debt-to-earnings rate thresholds as published in the 2015 Gainful Employment (GE) Rule, or the graduation and placement rate requirements under California law established in the 1989 Maxine Waters Act.

This pattern of a new state law that cross references to federal law or another state law can make for confusion. In this case, recall that the GE Rule is currently the subject of a rulemaking within ED and in its current form requires earnings data from the Social Security Administration, which is presently not available. As a result, ED has not published new rates under the GE Rule since the Obama Administration pushed out the first set of “official” rates before leaving office in January 2017.

In addition, the California Legislature repealed the Maxine Waters Act years ago, so it is strange to have a new law that would rely on it. However, it should be noted that the act did prescribe specific completion and placement thresholds that in no way align with the BPPE’s current regulatory structure for measuring completion or placement rates.

Based on these vagaries, it is hard to see how this particular bill as currently written could be enforced. However, as with any legislation, the language will be amended, rewritten and cleaned up as it winds through the process. While we cannot parse the exact meaning or impact of AB1340 at this stage, it lays down a clear marker for a powerful bloc of Assembly Democrats to create new and stringent accountability measures for student outcomes.

[AB1343](#)

This bill proposes to prohibit private postsecondary institutions, as defined by the CPPEA, from enrolling any student in California, if the institution “arranges loans” for students and does not meet a specific threshold ratio of government funding to other forms of tuition payment. This bill is a spin on the U.S. Department of Education’s 90/10 metric, applicable to proprietary institutions participating in Title IV aid programs, wherein an institution is only eligible for participation as long as at least 10% of its revenue comes from non-Title IV sources. Similar to proposals floating around DC in the past few years, this bill would change the ratio to 80/20 and include *all* federal and state funding in the 80 side of the ratio, not just Title IV funds. Read broadly, this new measure would include all Title IV funds, as well as veterans and military funding, workforce and retraining funds (such as the Workforce Investment Act, Trade Adjustment Act and Vocational Rehab), and state programs, such as Cal Grant. For many institutions, especially those serving a large veteran and military population, this metric would be a death knell.

The alternative measure proposed is based on the number of students receiving these same funds. If more than 85% of the institution’s students fund any part of their education with government programs, the institution would be barred from enrolling new students. Again, for many institutions, the vast majority of their students receive some form of government student aid, and this bill does not consider that much of this aid is in the form of grants not loans and in some cases may pay only a small portion of a student’s total program costs.

This is the first of several posts on the package of seven new bills introduced in the California Legislature.

Again, please note the proposed rule by CSAAVE discussed above as the comment period ends at 5:00 PST on March 9. If you have views or comments on this proposed rule, you only have a few more days to submit them.

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