

California Presses Forward with Bill to Ban OPM Tuition Share Arrangements

April 16, 2019

Last week, the California Assembly Higher Education Committee unanimously voted to advance a bill designed to exclude OPMs and service providers from tuition share arrangements. AB 1345 would broaden California's existing language prohibiting schools from providing any incentive compensation payments to any employee or third party for success in securing enrollments. Most importantly, the proposed legislation would negate the exception allowed under federal law that allows OPMs and other service providers to participate in tuition sharing arrangements. The law would apply to any private post-secondary education provider (whether for-profit or nonprofit) with a physical location in the state (except, for example, certain WASC-accredited schools that do not hold approval with BPPE). Depending on the final form of related bills pending in the Assembly, the law could also ultimately apply to out-of-state distance education providers who enroll California residents and are required to be registered with BPPE.

Current California law includes broad language prohibiting incentive payments, but covered schools can satisfy the state rule if such schools are subject to and comply with the federal Incentive Compensation Rule. Longstanding US Department of Education guidance provides for an exception to its general ban on incentive compensation payments, which includes a prohibition on tuition share arrangements. Under the "bundled services exception," the department allows tuition share arrangements if the third party provides a "bundle of services" in addition to and distinct from its recruiting services and it receives a share of tuition in exchange for all services provided collectively. Drafters and supporters at the Assembly hearing last week made clear that the goal of AB 1345 is to eliminate the bundled services exception for California schools, which supporters described as a loophole that allows schools to "hide bounty payments" in tuition share arrangements with third parties.

The bill will now be considered by the Assembly Business and Professions Committee, which has scheduled a hearing for April 23. That hearing is the next opportunity for the public to comment on the bill, with both in-person and written testimony accepted.

If passed out of the Business and Professions Committee, the bill will go to the Assembly Appropriations Committee and from there to the Assembly floor. It is likely that, as the bill progresses through the legislative process, it will be further amended before being voted on by the full Assembly. If passed by the Assembly, the measure will go to the Senate, where the committee process will repeat itself. If passed by the Senate, the bill then will be sent to Governor Newsom for his signature. And if signed into law, the changes likely will take effect on January 1, 2020.

The legislature will remain in session until September. While the timing of further action on AB 1345 and accompanying school-related legislation remains uncertain, we anticipate the Assembly to consider this measure in May.

As always, we will continue to provide updates on this bill and the other consumer protection legislation in [California](#) and [other states](#), including on the committee hearings. If you have further questions or would like to discuss outreach, please contact Katherine Lee Carey at kleecarey@cooley.com or Vince Sampson at vsampson@cooley.com.

Nancy Anderson focuses on regulatory issues affecting higher education institutions, including compliance with federal, state and accrediting agency requirements.

Kate Lee Carey focuses on the legal, accreditation, administrative and regulatory aspects of regionally and nationally accredited higher education institutions and companies that provide services to the education industry.

Mike Goldstein has been a pioneer in the development of new and more effective and efficient approaches to education in general and eLearning in particular through the creation of innovative approaches to combining the resources and interests of the various sectors of the education, technology, financial and governmental communities.

Vince Sampson focuses on helping clients predict, navigate and understand the increasingly complex involvement of federal agencies and Congress.

Paul Thompson counsels schools and technology companies that provide services to schools on regulatory challenges in the education sector.

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