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CA BPPE Issues Final Regulations on Data Reporting and Disclosure

August 8, 2016

After several rounds of public comment and revisions, the Bureau for Private Postsecondary Education ("BPPE" or "Bureau") has issued final regulations significantly expanding the data reporting and disclosure requirements with respect to an institution's Annual Report, Performance Fact Sheets, and website. The new regulations were approved and went into effect on July 14, and as currently written, will apply to institutional reporting requirements now set for December 1, 2016. That means that institutions will need to take steps now to collect and prepare the underlying data that must be disclosed later this year.

The new regulations apply to all institutions approved to operate in California by the Bureau, whether accredited or non-accredited, including coding academies and other non-traditional education providers with a location or administrative office in California. .

The new California regulations include changes to the data reported in the annual report and Performance Fact Sheets (PFS), as well as additional information that must be provided to students prior to enrollment. A "red-lined" version showing changes to the adopted regulation is available. Several practical points regarding how BPPE plans to implement the new regulations remain unclear, particularly given that the time period for gathering data on most 2015 graduates already passed prior to the new regulations' effective date. We will be monitoring the implementation of this rule closely. The most significant changes are highlighted below:

1. Changes to the definition of "gainfully employed," including detailed new data elements that must be collected and analyzed, for purposes of measuring and reporting graduate placement data.
2. Broadened data collection and record maintenance to support reporting and disclosure information.
3. Reporting and PFS updates will now be required by December 1 each year, instead of September and August respectively.
4. A Notice of Cancellation must now be provided, as its own individual form, along with the Fact Sheet to prospective students prior to enrollment.
5. New disclosures about freelance work and program costs must be included in the Fact Sheets and provided to prospective students prior to enrollment.

The new disclosure and reporting requirements are complex and substantially increase compliance risks for all BPPE-authorized institutions and entities offering educational programs in California. Coding academies and other non-traditional education providers, which may be new to BPPE's reporting requirements, will need to quickly put in place protocols to collect the required student data. Inaccurate reporting could subject such education providers to penalties from BPPE as well as the Federal Trade Commission under its regulations governing deceptive marketing practices by businesses that offer vocational training.

For institutions participating in Title IV programs, the risk associated with the new regulations is particularly acute as it coincides with increased scrutiny and stiffer penalties for schools that even inadvertently issue inaccurate statements. California's new definition of the term "gainful employment" is not consistent with the federal definition, and does not replace or change the data required to be reported under the US Department of Education's ("ED") Gainful Employment Rule. Institutions subject to both California regulatory oversight and the federal rules will inevitably be reporting and disclosing two very different sets of placement data that will need to be clearly explained. Moreover, the breadth of disclosures and the detailed new rules for counting placements under BPPE's regulations increases the risk that institutions may unintentionally issue inaccurate data or misleading statements in violation of the federal Misrepresentation Rule. In recent years, numerous schools have been the subject of federal investigation and private lawsuits for allegedly issuing misleading statements, particularly with respect to student placement, and the proposed changes to the definition of "misrepresentation" in ED's pending Borrower Defense to Repayment rules would expand the scope of the Misrepresentation Rule and increase the penalties for education providers that inadvertently issue inaccurate statements about their programs.

While the new rules currently apply only to institutions under the jurisdiction of the Bureau and thus do not apply to online programs without a physical presence in California, the California legislature is also considering other changes to its laws to conform to federal state authorization requirements. It is therefore possible the rules may apply to distance education offerings in the future.

Please contact Kate Lee Carey or another member of the Cooley team if you have additional questions about the new regulations, need assistance in preparing these disclosures, or would like to receive updates as we obtain further guidance from BPPE.

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