

**CALIFORNIA STUDENT AID COMMISSION
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Cal Grant Program Appeal Process & Appeal Criteria Regulation

**Title 5. Education, Division 4. California Student Aid Commission,
Chapter 1. California Student Aid Commission**

Adopt new article 4.5. Cal Grant Program Appeal Process and Appeal Criteria, sections 30045, 30046, 30047, 30048, and 30049, California Code of Regulations.

INITIAL STATEMENT OF REASONS

I. INTRODUCTION AND BACKGROUND

This document presents the California Student Aid Commission staffs proposed regulations establishing an appeal process and appeal criteria for qualifying institutions participating in the Cal Grant Program. This voluntary appeal process will be available to qualifying institutions that fail to meet the three-year cohort default rate and graduation rate requirements of Education Code Section 69432.7(I)(3)(C) and (F), respectively. Staff has prepared these regulations in response to direction provided by the California Student Aid Commission at its July 23, 2020 hearing, where the Commission discussed potential appeal issues and options for developing regulations in accordance with Education Code Section 69432.7 (I)(3)(I)(iv).

Education Code Section 69432.7 was most recently amended by Assembly Bill 3255 (AB 3255), Chapter 505, Statutes of 2018. Education Code Section 69432.7 (I)(3)(I) provides that the Commission shall do the following relative to establishing an appeal process and appeal criteria for qualifying institutions participating in the Cal Grant Program:

Subsection (iv) (I)

Establish an appeal process for an otherwise qualifying institution that fails to satisfy the three-year cohort default rate and graduation rate requirements in subparagraphs (C) and (F), respectively.

Subsection (iv) (II)

The Commission may grant an appeal for an academic year only if the Commission has determined the institution has a cohort rate size of 20 individuals or less and the cohort is not representative of the overall institutional performance.

The proposed regulations contained in this document were developed to satisfy these provisions of the Education Code for the Commission to establish an appeal process for qualifying institutions, and to clarify the conditions under which the Commission may grant an appeal. The proposed regulation developed by staff to achieve this objective is shown in Appendix A: Proposed Regulatory Order.

II. THE PROBLEM THE PROPOSAL INTENDS TO ADDRESS

The Commission is proposing certain regulatory additions to the provisions set forth in California Code of Regulations, Title V, Division 4, Chapter 1, sections 30000 et seq., relative to the Cal Grant Program (“proposed adoption” or “proposed regulation”). Specifically, the Commission is proposing to establish a voluntary appeal process and appeal criteria for qualifying institutions participating in the Cal Grant Program pursuant to Education Code Section 69432.7 (1)(3)(I)(iv). The proposed regulation will clarify the process available to institutions interested in filing an appeal with the Commission and the conditions for which the Commission may grant an appeal.

III. THE SPECIFIC PURPOSE AND RATIONALE OF EACH ADOPTION, AMENDMENT, OR REPEAL

This chapter provides a summary of the specific purpose of each section of the proposed regulation, along with Commission staff’s determination of why each proposed section is reasonably necessary and appropriate to achieve the purpose of the proposed regulatory action.

Section 30045. Purpose and Applicability.

Summary and Purpose of Section 30045

This section states the purpose of the proposed regulation to establish a Commission appeal process and appeal criteria in accordance with Education Code Section 69432.7 (1)(3)(I)(iv), and describes the applicability and availability of the appeal process to qualifying institutions participating in the Cal Grant Program.

Rationale for Section 30045

This proposed section is necessary to describe the purpose of the regulation and to clarify that the appeal process will apply and be available to eligible qualifying institutions participating in the Cal Grant Program. This is necessary to clarify the proposed regulation establishes a Commission appeal process available to qualifying institutions participating in the Cal Grant Program in accordance with Education Code Section 69432.7 (1)(3)(I)(iv).

Section 30046. Definitions.

Summary and Purpose of Section 30046

This section includes definitions for the key terms used in this proposed regulation.

Rationale for Section 30046

This section is necessary to reference and define the key terms and performance criteria that apply to implementing the proposed regulation.

Purpose of Subsection 30046(a)

This subsection defines the meaning of “Commission Certification” as it applies to qualifying institutions' ability to participate in the State’s Cal Grant Program. This annual certification officially establishes an institution’s cohort default and graduation rates as they apply to the Cal Grant program and determines an institution’s eligibility to continue participation in the program for the upcoming academic year. Education Code Section 69432.7 (l)(3)(A) provides that the Commission shall certify by November 1 of each year an institution’s latest three-year cohort default rate and graduation rate as reported by the US Department of Education. Loss of Commission certification prevents institutions from further participation in the program. Loss of certification is also one of the criterion for filing an appeal with the Commission under the proposed regulation.

Rationale for Subsection 30046(a)

This subsection is necessary to define and specify an annual action taken by the Commission to certify a qualifying institution’s three-year cohort default and graduation rate in accordance with the State Education Code. As noted above, this Commission action affects an institution’s ability to participate in the Cal Grant Program and governs eligibility to file an appeal under this proposed regulation.

Purpose of Subsection 30046(b)

This subsection defines the meaning of an institution’s “Three-Year Cohort Default Rate,” as determined by the United States Department of Education. The Commission considers the federal loan program default rate, in its annual institutional certifications, as a factor in determining an institution’s eligibility to participate in the Cal Grant program. State Education Code Section 69432.7 (l)(3)(C) generally provides that for purposes of the 2012-13 academic year, and every academic year thereafter, an otherwise qualifying institution with a three-year cohort default rate that is equal to or greater than 15.5 percent as annually certified by the Commission shall be ineligible for Cal Grant awards at the institution.

Rationale for Subsection 30046(b)

This subsection is necessary to define the conditions that constitute an institution’s three-year cohort default rate as defined and annually determined by the Federal Department of Education. This federal definition also identifies the specific federal loan programs subject to default and the numeric criteria used to calculate the rate of borrower default within a cohort default period. As noted above, this federal loan program default rate is a statutorily required factor in the Commission’s determination of an institution’s ability to participate in the Cal Grant Program for the upcoming academic

year. Exceeding the default rate also governs an institution's ability to file an appeal under this proposed regulation.

Purpose of Subsection 30046(c)

This subsection defines the meaning of an institution's "Graduation Rate," for the purposes of this regulations as specified in the Education Code. The Commission considers an institution's graduation rate, in its annual institutional certifications, as a factor in determining an institution's eligibility to participate in the Cal Grant program. Education Code Section 69432.7 (I)(3)(A) generally provides that the graduation rate, for purposes of this determination, is the percentage of full-time, first-time degree or certificate-seeking undergraduate students who graduate in 150 percent or less of the expected time to complete degree requirements as most recently reported by the US Department of Education.

Rationale for Subsection 30046(c)

This subsection is necessary to define the student classifications and numeric threshold that constitute an institution's graduation rate, for purposes of this section, in accordance with Education Code Section 69432.7 (I)(3)(A). As noted above, the graduation rate is a factor in determining an institution's ability to participate in the Cal Grant Program for the upcoming academic year. Failure to meet this graduation rate threshold also governs an institution's ability to file an appeal under this proposed regulation.

Purpose of Subsection 30046(d)

This subsection defines the meaning of an institution's "Overall Graduation Rate" for purposes of assessing an institution's overall performance, in accordance with the appeal criteria of this regulation. For purposes of this regulation, an institution's overall graduation rate is defined as the percentage of degree or certificate-seeking undergraduate students who graduate in 150 percent or less of the expected time to complete degree requirements.

Rationale for Subsection 30046(d)

Education Code Section 69432.7 (I)(3)(I)(iv)(II) provides the Commission may grant an appeal where it has determined that the three-year cohort default rate and graduation rate of the institution's cohort of 20 individuals or less is not representative of the institution's overall performance. Therefore, it is necessary for the Commission to define and consider an institution's overall graduation rate in its assessment of overall institutional performance for purposes of determining whether an appeal should be granted.

Section 30047. Appeal Eligibility

Summary and Purpose of Section 30047

This section specifies the conditions under which a qualifying institution would be eligible to file an appeal with the Commission for purposes of regaining program eligibility for an upcoming academic year. In particular, only institutions who received

Commission notification of loss of eligibility for initial and renewal Cal Grant awards in accordance with Education Code Section 69432.7 (I)(3)(A), on or after November 1, 2021, would be eligible to file an appeal under this proposed regulation. In addition, Education Code Section 69432.7 (I)(3)(I)(iv)(II) specifies the Commission may only grant an appeal where the institution has a cohort size of 20 individuals or less and the cohort is not representative of overall institutional performance. Thus, an institution would have to meet both the Commission loss of institutional eligibility notification and cohort size cap to be eligible to file an appeal under this proposed regulation.

Rationale for Section 30047

Education Code Section 69432.7 (I)(3)(I)(iv)(I) provides that the Commission “shall establish an appeal process for an otherwise qualifying institution that fails to satisfy the three-year cohort default rate and graduation rate requirements.” This section is necessary to establish and clarify the threshold conditions under which an institution would be eligible to file an appeal with the Commission under this proposed regulation and clarify the cohort size limitations under which the Commission is authorized to grant an appeal.

Section 30048. Appeal Filing

Summary and Purpose of Section 30048

This section identifies the eligibility conditions under which a qualifying institution may elect to file an appeal with the Commission, the information and certifications required to be included in the appeal, and the process and timeline for filing the appeal with the Commission. This section also establishes and describes the informational contents of a proposed Appeal Certification Form (Appendix A), and the informational contents of a Formal Letter of Appeal, to be completed and filed with the Commission in support of an institution’s appeal.

Rationale for Section 30048

This section is necessary to implement Education Code Section 69432.7 (I)(3)(I)(iv)(I), which provides that “the Commission shall establish an appeal process for an otherwise qualifying institution that fails to satisfy the three-year cohort default rate and graduation rate requirements.”

Summary and Purpose of Subsection a. **Appeal Certification Form**

The described informational contents of the Appeal Certification Form are designed to assist qualifying institutions to determine if they meet the eligibility conditions required to file an appeal and, if so, the information and certifications they shall provide to the Commission in support of the appeal claim. The required information is necessary to implement the substantive provisions of Education Code Section 69432.7 (I)(3)(I)(iv)(II), which provides “the Commission may grant an appeal for an academic year only if the Commission has determined the institution has a cohort rate size of 20 individuals or less and the cohort is not representative of the overall institutional performance.”

Rationale for Subsection a. **Appeal Certification Form**

For the Commission to effectively evaluate and process an institution's appeal, it is necessary to establish and identify the name and contact information of the institution. To evaluate an institution's eligibility to file an appeal in accordance with the provisions of the Education Code and this regulation, it is necessary to require institutions to certify that they meet the appeal eligibility criteria specified in this proposed regulation. Requested certifications from institutions concerning cohort default rate or graduation rate, and cohort rate sizes of 20 students or less, are necessary to demonstrate appeal eligibility. Other required information concerning current student enrollment numbers and Cal Grant payment receipts are necessary to verify institutional enrollment statistics and to establish appeal eligibility.

Summary and Purpose of Subsection b. **Formal Letter of Appeal**

The Letter of Appeal is designed to provide the chief administrative official of an institution the opportunity to thoroughly explain the basis for an appeal, provide any additional supporting documentation not requested in the Appeal Certification Form, describe the reasons why the institution's cohort default and graduation rates may not be representative of overall performance, and describe any actions the institution has taken to improve cohort default and graduation rates.

Rationale for Subsection b. **Formal Letter of Appeal**

The factors affecting an institution's cohort default and graduation rates, overall performance, and potential corrective actions undertaken vary and are unique to each institution. Therefore, it is appropriate and necessary to allow institutions the opportunity to explain the issues affecting their performance and provide additional information that may be relevant to their appeal, which may help the Commission render a decision on an appeal.

Section 30049. Commission Review

Summary and Purpose of Section 30049

This section describes the Commission's proposed appeal review process, and the appeal assessment factors that will be considered for institutions that fail to meet the three-year cohort default and graduation rate requirements. The appeal review process will consist of ministerial determinations made by Commission staff concerning appeal eligibility and appeal filing requirements, as well as potential discretionary review factors considered by the Commissioners for appeals that are advanced to it by staff.

Rationale for Section 30049

This section is necessary to explain the various steps of the Commission's proposed appeal review process and the decision-making role and authority of Commission staff and of the Commissioners in the review process. This section is also necessary to clarify the factors the Commission will consider in determining whether an institution's cohort default and graduation rates are representative of overall institutional performance.

Purpose of Subsection 30049(a)(1)

This subsection describes a preliminary staff review and screening process for submitted appeals to determine if the institution meets the statutory appeal eligibility requirements and the appeal filing requirements in these regulations. Staff will determine if the appeal meets the requirements for receiving Commission review.

Rationale for Subsection 30049(a)(1)

This subsection is necessary to clarify that staff will be responsible for performing a preliminary assessment of submitted appeals to determine if they meet appeal eligibility and filing requirements before an appeal may be moved forward for Commission consideration. This section is necessary to clarify that Commission staff will perform this preliminary review and may reject appeals that fail to meet minimum statutory eligibility and filing requirements.

Purpose of Subsection 30049(a)(2)(A)

This subsection describes staff's proposed sole role in verifying whether an appealing institution's reported cohort size consists of 20 students or less, for purposes of calculating an institution's three-year cohort default rate and/or graduation rate, and is therefore eligible to file an appeal under the proposed regulation. Staff's verification of the cohort size will constitute the final determination of appeal eligibility under this Article.

Rationale for Subsection 30049(a)(2)(A)

This subsection is necessary to describe and clarify the Commission staff's independent role in making a final ministerial determination of appeal eligibility based on staff's verification of an institution's cohort size. Staff's verification of an institution's cohort size will be a determining factor in whether an appeal is advanced for Commission review.

Purpose of Subsection 30049(a)(2)(B)

This subsection describes staff's proposed role in conducting a preliminary review of whether the cohort performance subject to an appeal is appropriately representative of the institution's overall performance and whether an institution's reported actions to improve performance are sufficient. Staff will review the information submitted in an institution's Appeal Certification Form and Formal Letter of Appeal to make a preliminary determination of overall institutional performance relative to the cohort performance and the adequacy of actions taken by the institution to improve performance. Based on staff's preliminary evaluation of this information, staff will make a recommendation to the Commission as to whether the appeal should be approved or denied.

Rationale for Subsection 30049(a)(2)(B)

This subsection is necessary to describe and clarify staff's preliminary review role in evaluating the appeal filings and information submitted by institutions and to make a recommendation to the Commission, based on its independent review of this

information, as to whether an appeal should be approved or denied.

Purpose of Subsection 30049(a)(3)

This subsection describes staff's proposed process to notify and inform an institution of the results of staff's preliminary review and determination of an institution's appeal filing, appeal eligibility, and provide information on when and how the institution may participate in any Commission's hearing on the appeal.

Rationale for Subsection 30049(a)(3)

This subsection is necessary to describe and clarify how Commission staff will notify an institution of the results of staff's review and determination of an appeal filing, and to inform the institution as to how it may potentially participate in a Commission hearing scheduled for the appeal.

Purpose of Subsection 30049(b)

This subsection specifies that an appeal granted by the Commission will restore an institution's Cal Grant Program eligibility only for the upcoming academic year and that the Commission's action on an appeal request will constitute a final determination.

Rationale for Subsection 30049(b)

Education Code Section (I)(3)(A) requires the Commission to annually certify an institution's eligibility to participate in the Cal Grant Program, and Education Code Section (I)(3)(I)(iv)(II) specifies the Commission may grant an appeal for an academic year. Thus, this subsection is necessary to establish and clarify that any action taken by the Commission to deny or grant an institution's appeal is limited to the upcoming academic year. It is also appropriate and necessary to clarify that the Commission's decision on an appeal for the upcoming academic year shall constitute a final determination.

Purpose of Subsection 30049(c)

This subsection describes the information the Commission will consider in its decision to approve or deny an appeal, where an institution has lost Cal Grant Program eligibility due to its failure to meet Three-Year Cohort Default Rate Standards. The information will include, but may not be limited to, the institution's record of meeting Default Rate standards in the prior five years and actions the institution has taken to improve the Default Rate as identified in the Formal Letter of Appeal. This information will form the basis of the Commission's determination of whether the cohort performance is not representative of overall institutional performance, in accordance with Education Code Section (I)(3)(I)(iv)(II).

Rationale for Subsection 30049(c)

This subsection is necessary to establish and clarify the basis of information the Commission will consider to determine whether an appeal should be approved or denied, pursuant to Education Code Section (I)(3)(I)(iv)(II).

Purpose of Subsection 30049(d)

This subsection describes the information the Commission will consider in its decision to approve or deny an appeal, where an institution has lost Cal Grant Program eligibility due to its failure to meet Graduation Rate Standards. The information will include, but may not be limited to, consideration of the institution's Overall Graduation Rate and actions the institution has taken to improve the Graduation Rate as identified in the Formal Letter of Appeal. This information will form the basis of the Commission's determination of whether the cohort performance is not representative of overall institutional performance, in accordance with Education Code Section (I)(3)(I)(iv)(II).

Rationale for Subsection 30049(d)

This subsection is necessary to establish and clarify the basis of information the Commission will consider to determine whether an appeal should be approved or denied, pursuant to Education Code Section (I)(3)(I)(iv)(II). Education Code Section (I)(3)(F) generally provides that a qualifying institution with a Graduation Rate of 30 percent or less, as certified by the Commission, shall be ineligible for Cal Grant awards at the institution. Thus, if an institution's Overall Graduation Rate exceeds 30 percent, the Commission may determine the cohort Graduation Rate is not representative of overall institutional performance.

IV. BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed regulatory adoptions will add clarity and specificity to the Cal Grant Program by detailing the conditions and criteria, relative to cohort default and graduation rates, that are eligible for appeal; and clarify and streamline the process for filing an appeal with the Commission by qualifying institutions participating in the Program. The proposed adoptions are designed to bring greater efficiency and transparency to the Commission's appeal process and the overall administration of the Cal Grant Program. For these reasons, the proposed adoptions are needed to better specify the procedural and substantive requirements for the appeal process. There are no expected benefits to worker safety, and public health and safety resulting from this rulemaking.

V. JUSTIFICATION FOR ADOPTION OF REGULATIONS DIFFERENT FROM FEDERAL REGULATIONS CONTAINED IN THE CODE OF FEDERAL REGULATIONS

The regulation would only apply in California and specifically to the Cal Grant Program and would neither affect nor conflict with any federal regulations or federal education programs. In accordance with the California Education Code, the regulation references and relies upon the same definition and methodology used by the Federal Department of Education to determine "cohort default rates" for institutions participating in the Cal Grant Program.

VI. PUBLIC PROCESS FOR DEVELOPMENT OF PROPOSED REGULATORY ACTION (Pre-regulatory Information)

These regulations are prepared in response to direction provided by the California Student Aid Commission at its July 23, 2020 hearing, in which Commission members and staff discussed potential appeal issues and options for developing regulations pursuant to Education Code Section 69432.7(l)(3)(l)(iv). The Commission published its Notice of the Proposed Rulemaking on November 27, 2020, in the California Regulatory Notice. The last day for written comment on the Notice of Proposed Rulemaking is January 13, 2021. A public hearing on this matter is scheduled for January 14, 2021. This Initial Statement of Reasons is being noticed to the public to provide the opportunity for public review and comment on the proposed regulation to establish a Commission appeal process and appeal criteria for the Cal Grant Program.

VII. ECONOMIC IMPACT ASSESSMENT

The proposed regulation clarifies and details the requirements and process for filing an appeal claim with the Commission by qualifying institutions participating in the Cal Grant Program. Filing an appeal under the proposed regulation is a voluntary option available to qualifying institutions. As such, the proposed regulation places no new or substantial requirements on businesses, individuals, or government agencies within California.

The regulation is not expected to create or eliminate any jobs within the state. The regulation is not expected to create new businesses or eliminate existing businesses within the state or cause an expansion to businesses currently doing business within the state. Therefore, the proposed regulation has no potential for adverse economic or fiscal impact. Furthermore, there is no significant statewide adverse economic impact directly affecting businesses, including California businesses' ability to compete with businesses in other states or on representative private persons.

The benefits of this regulation, as discussed above, would be to add greater clarity and specificity to the appeal process available to qualifying institutions, thereby improving the overall administrative efficiency of the Commission and its administration of the Cal Grant program. The regulation is not expected to impact California residents' health and welfare, worker safety, and the state's environment.

VIII. EVALUATION OF REGULATORY ALTERNATIVES

Government Code Section 11346.2(b)(4) requires the Commission to consider and evaluate reasonable alternatives to the proposed regulatory action and provide reasons for rejecting those alternatives. This section discusses alternatives evaluated and provides reasons why these alternatives were not included in the proposed regulation. As explained below, no proposed alternative was found to be less burdensome and equally effective in achieving the regulation's purposes. The Commission has not

identified any reasonable alternatives that would lessen any adverse impact on small businesses.

The Executive Officer evaluated a “Take No Action” alternative to the proposed regulation. A take no action alternative means the Commission would not develop or formalize an appeal process, and prescribe or clarify the conditions eligible for appeal, in accordance with Education Code Section 69432.7(l)(3)(l)(iv). Up until this time, the Commission has evaluated, and taken action to grant or deny, several appeals filed by qualifying institutions without the benefit of a formalized appeal process.

Because the Commission has not clearly established the conditions or criteria eligible for appeal, institutions that did not meet appeal eligibility criteria of the Education Code were able to have their appeal heard by the Commission. This caused the Commission to consent to hearing appeals that it was statutorily unauthorized to approve under the Education Code. This created added cost, as well as inefficient and unnecessary demands on the time and resources of Commission staff and the Commissioners.

The Executive Officer also evaluated a “ministerial performance standards” alternative to the proposed regulation. This alternative would allow Commission staff to independently evaluate and potentially approve a qualifying institution’s appeal provided certain statutory eligibility conditions and prescribed performance standards were met. For example, Education Code Section 69432.7(l)(3)(l)(iv)(ll), provides “the Commission may grant an appeal for an academic year only if the Commission has determined the institution has a cohort rate size of 20 individuals or less and the cohort is not representative of the overall institutional performance.”

Although determining whether a cohort is not representative of overall institutional performance involves discretionary determinations, staff could potentially develop and apply pre-determined performance standards or criteria to assess an institution’s overall performance and determine if an appeal should be granted. For example, numeric and prescribed “performance standards” or criteria that objectively assess an institution’s historic record in meeting cohort default and graduation rate requirements, Cal Grant administrative capability, recent program audit findings, and steps taken by an institution to rectify student default or graduation rates could potentially be developed and applied by staff.

This potential alternative would closely mimic the factors currently evaluated by the Commission in its discretionary hearing process for appeals at a staff ministerial level. However, staff believes that due to the broad variation of factors among institutional performance, and the importance of providing the opportunity for a thorough consideration of an institution’s appeal by a discretionary authority, the Commissioners should retain final authority over such determinations.

For these reasons, Commission staff believes the proposed regulatory option under this action (which includes some performance based criteria and thresholds to be independently applied by staff, coupled with a final decision making role for the Commissioners) represents the most appropriate option to establish a Commission

appeal process in accordance with Education Code Section 69432.7(I)(3)(I)(iv), and to clarify the appeal criteria for participating institutions.

IX. APPENDICIES

A. Proposed Regulatory Order