

Information/Action Item

California Student Aid Commission

Consideration of authorization to commence rulemaking process for the adoption of regulations to interpret and make specific sections 69433.2 and 69433.6 of the Education Code relating to the Cal Grant participating institution date reporting requirements established by Senate Bill 70 (Chapter 7, Statutes of 2011)

The Commission has previously discussed the changes made to the Education Code by Senate Bill 70 (Chapter 7, Statutes of 2011) (hereinafter "SB 70") as it relates to the new requirement that qualifying institutions must fall below a specified 3-year cohort default rate in order to receive new Cal Grant awards. SB 70 also added a new section to the Education Code requiring that Cal Grant participating institutions report to the Commission certain information relating to their programs. New Education Code section 69433.2 provides:

As a condition for its voluntary participation in the Cal Grant Program, each Cal Grant participating institution shall, beginning in 2012, annually report to the commission, and as further specified in the institutional participation agreement, both of the following for its undergraduate programs:

- (a) Enrollment, persistence, and graduation data for all students, including aggregate information on Cal Grant recipients.
- (b) The job placement rate and salary and wage information for each program that is either (1) designed or advertised to lead to a particular type of job; or (2) advertised or promoted with any claim regarding job placement.

In order to implement SB 70's reporting requirements, the Commission will need to adopt regulations informing the institutions how to comply with section 69433.2; for example, the statute does not provide a definition of "persistence" nor does it provide the methodology for determining "job placement rate." These regulations need to be in place in time for the institutions to begin reporting no later than December 2012.

Staff is requesting the authority to commence the formal rulemaking process required to implement regulations under the Administrative Procedure Act. This will include the development of the proposed text, the Initial Statement of Reasons, the STD 399 Fiscal Impact Statement, and the Notice of Proposed Regulatory Action. These forms would then be submitted to the Office of Administrative Law (OAL) for review and publication. These documents would also be published on the Commission's website.

The rulemaking process requires, at a minimum, a 45-day public comment period. The Commission may also elect to hold a public hearing on a proposed rulemaking action. If the Commission does not schedule a public hearing, any interested person can submit a written request for one to be held. The written request for a hearing must be submitted at least 15 days prior to the close of the written public comment period, and the agency must give notice of and hold a public hearing.

After the initial 45-day public comment period, the Commission may decide to change its initial proposal either in response to public comments received or on its own initiative. If changes to the initial regulations are made, the Commission would have to decide whether the changes necessitate an additional public comment period. Depending on whether the change is nonsubstantial or substantial, an additional comment period of either 15-days or 45-days may be required.

The Commission must summarize and respond on the record to timely comments that are directed at the proposal or at the procedures followed by the agency during this process. With each comment, the agency must either (1) explain how it has amended the proposal to accommodate the comment, or (2) explain the reasons for making no change to the proposal. The summary and response to comments are part of the rulemaking file and are included in the Final Statement of Reasons that is submitted to OAL.

Once the complete rulemaking file is submitted to OAL, OAL has 30 working days to conduct its review. OAL must review the rulemaking record to determine whether it demonstrates that the Commission satisfied the procedural requirements of the APA and complied with the appropriate legal standards. Once OAL has completed its review, and assuming the Commission has met its obligations, OAL files the regulation with the Secretary of State and the regulations become effective.

Recommended Action: Authorize staff to commence the regulatory process, including drafting proposed regulations and accompanying documents, request that the effective date of the regulations be the date of filing, and authorize staff to take the necessary steps to complete the regulatory process.

Responsible Person(s): Keri Faseler Tippins
General Counsel