

CALIFORNIA DEPARTMENT OF JUSTICE

**TITLE 11. LAW
DIVISION 1. ATTORNEY GENERAL
CHAPTER 10. BUREAU FOR PRIVATE AND POSTSECONDARY EDUCATION
EXEMPTION VERIFICATION**

NOTICE OF PROPOSED RULEMAKING

Notice published March 17, 2023

The Department of Justice (Department) proposes to adopt section 940 of title 11, division 1, chapter 10 of the California Code of Regulations concerning the Attorney General's verification of an institution of higher education's nonprofit status.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed regulatory action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or their authorized representative may submit written comments relevant to the proposed regulatory action. The written comment period closes on May 2, 2023, at 5:00 p.m. Only written comments received by that time will be considered. Please submit written comments to:

Department of Justice
Office of the Attorney General
Charitable Trusts Section
Attn: Scott Chan, Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004
(415) 510-3430
Scott.Chan@doj.ca.gov

NOTE: Written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

AUTHORITY AND REFERENCE

Authority: Section 94874.1, Education Code.

Reference: Sections 94874.1 and 94874.9, Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations:

In 2009, the Legislature passed the Private Postsecondary Education Act (the “Act”) creating a new oversight board within the Department of Consumer Affairs, the Bureau for Private Postsecondary Education (the “Bureau”). (See <https://www.bppe.ca.gov>.) The Bureau is generally responsible for protecting consumers and students against fraud, misrepresentation, and other business practices that may lead to loss of students’ tuition and related educational funds; and for imposing minimum standards for ethical business practices, fiscal integrity, and instructional quality of private postsecondary education institutions. (Ed. Code, § 94800 et seq.)¹

The Bureau oversees in-state institutions, as well as certain out-of-state institutions offering online instruction to California residents. The Act exempts certain types of institutions from the Bureau’s regulatory oversight if specific criteria are met. (§ 94874.) Institutions meeting the Act’s definition of “nonprofit corporation” or “public institution of higher education” are exempt from certain requirements imposed on out-of-state institutions. (§ 94801.5.)

Effective January 1, 2022, the Bureau is prohibited from verifying the exemption of, or contracting to handle complaints for, a nonprofit institution if it operated as a for-profit institution during any period on or after January 1, 2010, unless the Attorney General verifies specified information about the conversion. (§ 94874.1, subd. (a).) The Attorney General must provide written notification of its verification to the institution and to the Bureau within 90 days of receipt of all information the Attorney General determines is necessary for the verification. (*Id.*, subd. (d).) The Attorney General’s verification notice may be appealed to the superior court. (*Id.*, subd. (b).)

Effect of the Proposed Rulemaking:

The proposed regulation creates a procedure for the Attorney General to verify the nonprofit status of an institution of higher education. The “Application for Verification,” Form CT-SCHOOL-1, has been created for this purpose.

Anticipated Benefits of the Proposed Regulations:

Financial restrictions at nonprofit and public colleges make it difficult for school leaders to profit from bad behavior. Being a nonprofit has traditionally required an institution to devote all of its revenues to its educational purpose, and prohibit any form of profit-taking, so that those in control are not tempted to take advantage of students or the public. These restrictions have been so effective in protecting students that state and federal laws frequently provide funding only to

¹ All references are to the Education Code unless otherwise indicated.

nonprofit and public institutions, or apply stricter guidelines if for-profit colleges seek access to taxpayer funds.

The Legislature amended the Act in 2020 because some for-profit colleges deceptively converted and claimed nonprofit or public status to lure new students and escape regulatory oversight. These colleges used complicated financial schemes and shell corporations to wrongfully claim nonprofit status without adopting the restrictions that actually protect students. By creating a procedure for the Attorney General to verify the nonprofit status of a higher education institution that once operated as a for-profit entity, the proposed regulation protects students and ensures that appropriate oversight remains.

Comparable Federal Regulations:

There are no existing federal regulations or statutes comparable to these proposed regulations.

Determination of Inconsistency/Incompatibility with Existing State Regulations:

The Department has determined that these proposed regulations are not inconsistent or incompatible with existing State regulations. After conducting a review for any regulations that would relate to or affect this area, the Department has concluded that these are the only regulations that concern the Attorney General’s verification of an institution of higher education’s nonprofit status.

Forms Incorporated by Reference:

None.

Other Statutory Requirements:

None.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department’s Initial Determinations:

Mandate on local agencies or school districts: None.

Cost or savings to any state agency: The regulations are expected to have an ongoing fiscal impact on the Department of \$41,250 per year

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other non-discretionary costs or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on representative person or business: The Department has determined that any cost impact to businesses from the proposed regulations would be minimal. The Department estimates that it will take no more than an hour to complete and submit the required form or any additional information requested by the Attorney General.

Significant effect on housing costs: None.

Significant, statewide adverse economic impact directly affecting businesses, including ability to compete: The Department has made an initial determination that that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Results of the Economic Impact Assessment (EIA):

The Department concludes that it is (1) unlikely that the proposal will create or eliminate jobs within the state, (2) unlikely that the proposal will create new businesses or eliminate existing businesses within the state, (3) unlikely that the proposal will result in the expansion of businesses currently doing business within the state.

The Department also concludes that:

(1) The proposal would benefit the health and welfare of California residents by verifying the nonprofit status of institutions of higher learning and ensuring that students and taxpayers are not misled by untruthful claims.

(2) The proposal would not benefit worker safety because it does not regulate worker safety standards.

(3) The proposal would not benefit the state's environment because it does not change any applicable environmental standards.

Business report requirement:

Section 94874.1, subdivision (a), requires the Attorney General to verify specified information before the Bureau verifies the nonprofit institution is exempt from the Act. The "Application for Verification," Form CT-SCHOOL-1, has been created for this purpose.

The Department finds it is necessary for the health, safety or welfare of the people of this state that proposed section 940, which requires a report, applies to businesses.

Small business determination: The Department has determined that this proposed action does not affect small businesses because nonprofits are exempt from the definition of "small business." (Gov. Code, § 11342.610, subd. (b)(6).)

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department has determined that the proposed regulations are the most effective way to verify an institution of higher education's nonprofit status. A simple form was created for the institution to provide the necessary information to the Department. The applicant has to answer only four "yes" or "no" questions on the form and provide a narrative description of the transaction. A narrative description of the transaction should already be readily available to the applicant because the salient details of the transaction should be memorialized in transaction documents or the minutes of board of director meetings. The proposed procedures and form are the least burdensome way to ensure that the institution provides all required information to the Department.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

Department of Justice
Office of the Attorney General
Charitable Trusts Section
Attn: Scott Chan, Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004
(415) 510-3430
Scott.Chan@doj.ca.gov

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. In the event the contact person is unavailable, inquiries regarding the proposed action may be directed to the following backup contact person:

Marlon Martinez
Department of Justice
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
(213) 269-6437
regulations@doj.ca.gov

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS, AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process upon request to the contact person above. As of the date this Notice of Proposed Rulemaking (Notice) is published in the Notice Register, the rulemaking file consists of this Notice, the Text of Proposed Regulations (the “express terms” of the regulations), the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based. The text of this Notice, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department’s website at <https://oag.ca.gov/charities/laws>. Please refer to the contact information listed above to obtain copies of these documents.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the Department analyzes all timely and relevant comments received during the 45-day public comment period, the Department will either adopt these regulations substantially as described in this notice or make modifications based on the comments. If the Department makes modifications which are sufficiently related to the originally-proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the name and address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons will be available on the Department’s website at <https://oag.ca.gov/charities/laws>. Please refer to the contact information included above to obtain a written copy of the Final Statement of Reasons.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the express terms, the Initial Statement of Reasons, and any information upon which the proposed rulemaking is based are available on the Department’s website at <https://oag.ca.gov/charities/laws>.