

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1611 (McCarty) – As Amended April 17, 2017

SUBJECT: Private postsecondary education

SUMMARY: Requires certain debt-dependent programs to submit information to the Bureau for Private Postsecondary Education (BPPE) upon the repeal or suspension of specified federal Regulations; upon the repeal requires the BPPE to collect and make public certain data; and, requires the BPPE to take certain regulatory actions. Specifically, **this bill:**

- 1) Makes the following definitions:
 - a) “Academic year” is from July 1 to June 30;
 - b) “Classification of instructional program” (CIP) means taxonomy of instructional program classifications and descriptions developed by the United States Department of Education’s National Center for Education Statistics (NCES). The CIP code for a program is six digits;
 - c) “Earnings assessment year” means a period consisting of four consecutive quarters commencing not less than six quarters after the end of the period covered by a graduating cohort;
 - d) “Graduating cohort” means the persons completing a program at an institution for a particular academic year, commencing with the 2010–11 academic year. If the number of students in a graduating cohort is fewer than 30, sufficient additional previous consecutive academic years of graduates shall be included to achieve a cohort of at least 30 students;
 - e) “Graduate earnings cohort” means the persons in a graduating cohort who remain after the bureau has excluded, to the extent practicable using data available from sources independent of the institution, every person who has died or suffered a total and permanent disability, or at any time during the earnings assessment year was enrolled in any other educational program on a not less than half-time basis or was serving in the military;
 - f) “Federal student loans” means loans under Title IV of the federal Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1070 et seq.), not including loans made to parents of dependent students;
 - g) “Private student loans” means education loans as defined in 34 CFR 601.2, including private education loans provided by the institution, and any other credit, including unpaid charges, extended by or on behalf of the institution that the student is obligated to repay, including extensions of credit described in clauses (1) and (2) of the definition of, and excluded from, the term “private education loan” in 34 CFR 601.2; and,

- h) “Debt-dependent program” means a program in which at least one-half of the students enrolling in an academic year, or at least one-half of the graduating cohort, carried federal student loan balances, or private student loan balances, or both, after completing or withdrawing from the program.
- 2) Requires an institution to submit to the BPPE, for each of its debt-dependent programs, the following information regarding each person in a graduating cohort:
- a) Information needed to identify the person;
 - b) The name, CIP code, credential level, and length of the program;
 - c) The date the person completed the program;
 - d) The total amount the person received from federal student loans for enrollment at the institution;
 - e) The total amount the person received from private student loans that the institution is, or should reasonably be, aware of; and,
 - f) The total amount of tuition and fees assessed to the person for his or her entire enrollment in the program.
- 3) Requires BPPE to do the following:
- a) Obtain from the Employment Development Department the data, as specified, necessary to determine the median and average earnings of persons in the graduate earnings cohort for one or more earnings assessment years, not including persons for whom no earnings information was available;
 - b) Obtain from the California Student Aid Commission or, to the extent authorized by federal law, the United States Department of Education the amount borrowed in federal student loans for each person in the graduating cohort;
 - c) Determine the total amount of student loan debt incurred by each person in the graduating cohort for enrollment at the institution; and,
 - d) Make available to the public all of the following data for each debt-dependent program offered by each institution:
 - (i) The program’s CIP code;
 - (ii) The median and average earnings of the graduate earnings cohort for one or more earnings assessment years;
 - (iii) The number of persons represented in the graduating cohort, the number of persons represented in the graduate earnings cohort, and the number of

persons for whom earnings data were available from the Employment Development Department;

- (iv) The median and average federal student loan debt, private student loan debt, and total student loan debt of the graduate earnings cohort;
 - (v) The average tuition and fees assessed to students in the graduating cohort; and,
 - (vi) The number of persons with federal student loans, with private student loans, and the number with both.
- 4) Authorizes the bureau to do any, or all, of the following:
- a) Require institutions to provide warnings to current and prospective students regarding programs with high debt burdens relative to earnings;
 - b) Require an institution, as a condition of maintaining approval to operate for a program or for the institution, to restrict new loan-financed enrollment in a program; and,
 - c) Deny an approval to operate for a new program if the program is substantially similar to a program that has exhibited high debt burdens, as determined by the bureau.
- 5) Stipulates that this section shall be implemented only to the extent that implementation is in compliance with all state and federal privacy laws.
- 6) Provides that this bill shall take effect only if Part 668 of Chapter VI of Subtitle B of Title 34 of the Code of Federal Regulations is suspended or repealed.

EXISTING LAW: Establishes the Act until January 1, 2017, and requires BPPE, within the Department of Consumer Affairs (DCA) to, among other things, review, investigate and approve private postsecondary institutions (or institutions), programs and courses of instruction pursuant to the Act and authorizes BPPE to take formal actions against an institution/school to ensure compliance with the Act and even seek closure of an institution/school if determined necessary. The Act requires unaccredited degree granting institutions to be accredited by an accrediting agency recognized by the United States Department of Education (USDE) by 2020. The Act also provides for specified disclosures and enrollment agreements for students, requirements for cancellations, withdrawals and refunds, and that the BPPE shall administer the Student Tuition Recovery Fund (STRF) to provide refunds to students affected by the possible closure of an institution/school. (Education Code Section 94800 et. seq.)

FISCAL EFFECT: Unknown.

COMMENTS: *Purpose.* According to the author, “AB 1611 will require private postsecondary institutions to submit specified material related to each graduating cohort related to the amount of loans the student was given and the amount of tuition that was charged. In addition, this bill will require BPPE to obtain from the Employment Development Division data related to the average earnings of graduating cohorts. This data will be used by the BPPE to determine

programs with high debt burdens related to earnings and allow the BPPE to take certain actions on these programs and prospective programs.”

Background. On July 1, 2015, the federal gainful employment regulation took effect to protect students and increase accountability of low-performing career training programs at our higher education institutions. The federal USDE’s gainful employment regulation enforces the federal Higher Education Act’s requirement that all career training programs receiving Title IV federal student aid “prepare students for gainful employment in a recognized occupation.”

The gainful employment rule applies to all sectors of higher education: public, non-profit, and for-profit. Specifically, programs under the federal gainful employment regulation include: all Title IV eligible degree and non-degree programs at for-profit institutions and Title IV eligible non-degree programs (e.g., certificate and diploma programs) at public and non-profit institutions.

Gainful employment (GE) rules were enacted, in part, out of dramatically increased debt taken on by students. Over the last ten years, student loan debt has tripled from \$450 billion to nearly \$1.4 trillion. In a letter to Congress sent by 20 state attorneys general in February of 2017, it was noted that “...a major driver of this increase has been for-profit colleges. Of the top 25 schools where students hold the most student loan debt, over half were for-profit schools in 2014. This is up from only one for-profit institution in the top 25 in 2000.”

In addition to driving the increase in student loan borrowing, for-profit institutions also have significantly more loan defaults than other types of institutions. Since 2013, for-profit institutions accounted for 35% of all federal student loan defaults, but enrolled just 27% of all borrowers. Many for-profit schools are almost entirely dependent on federal grants and loans.

Federal rollback. A coalition of 53 groups representing consumer advocates, veterans, and labor sent a letter to Congress in March of 2017. This letter noted that “The [GE] regulation has already had a significant positive impact. The mere threat of sanctions under this rule prompted many colleges to eliminate their worst performing programs, to freeze tuition and implement other reforms to improve outcomes for their graduates. In part due to these reforms, nine in ten colleges with rated gainful employment programs have no failing programs, and even among for-profit colleges eight in ten have no failing programs, including American Public University, Capella University, Concorde Career College, ECPI University, Empire Beauty School, Grand Canyon University, and Strayer University. At the same time, the gainful employment rule has uncovered scores of failing programs that taxpayers are subsidizing—like the Medical Assisting associate’s degree program at McCann School of Business and Technology in Hazelton, PA, which is still actively recruiting new students and charging \$31,000 despite abysmal outcomes, including a 7% on-time completion rate, a 46% job placement rate, and median graduate earnings of only \$20,000.”

Legitimate fear? As noted by the opposition, the Trump Administration has not suspended or repealed GE regulations, and the ongoing delay of implementation has been characterized as an administrative necessity. While no action has been taken on GE that would scale back the regulator provisions already enacted, a broad concern about the strength of federal regulations seems to be well founded.

The Washington post wrote in February of 2017 that, “President Trump has embarked on the most aggressive campaign against government regulation in a generation, joining with Republican lawmakers to roll back rules already on the books and limit the ability of federal regulators to impose new ones. After just a few weeks in office, the new administration is targeting dozens of Obama-era policies, using both legislative and executive tactics. The fallout is already rippling across the federal -bureaucracy and throughout the U.S. economy, affecting how dentists dispose of mercury fillings, how schools meet the needs of poor and disabled students, and whether companies reject mineral purchases that fuel one of the world’s bloodiest conflicts.”

Staff also notes that the U.S. Representative Virginia Foxx, Chairwoman of the House Education committee, said in an interview with Inside Higher Ed that the GE regulations were among the “...onerous rules and regulations...” that congress would “... do everything we can to roll back ...”

Policy considerations. Staff notes that this measure is contingent upon the suspension or repeal of Part 668 of the Code of Federal Regulations, which implement federal GE regulations.

The author may wish to consider an additional a provision providing for the promulgation of regulations to implement the broad enforcement actions authorized.

Staff notes that a bill under consideration in this committee, AB 1619 (Berman), would implement enforcement provisions similar to those authorized under GE regulations.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

California Association of Private Postsecondary Schools
California Coalition of Accredited Career Schools

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