

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1619 (Berman) – As Amended April 17, 2017

SUBJECT: Private postsecondary education

SUMMARY: Requires the Bureau for Private Postsecondary Education (BPPE) to prohibit institutions that are subject to the provisions of the Private Postsecondary Education Act (Act) of 2009 from enrolling new students in an educational program that receives a fail rating for two out of three consecutive years, or receives a combination of zone or fail ratings for four consecutive years, based on the federal debt-to-earnings rates. Specifically, **this bill:**

- 1) Requires the BPPE to prohibit an institution that is not exempt from the Act from enrolling new students in an educational program that receives a fail rating for two out of three consecutive years, or receives a combination of zone or fail ratings for four consecutive years, based on the federal debt-to-earnings rates.
- 2) Requires the Bureau to adopt regulations as necessary to implement this section, including regulations to obtain data if the United States Department of Education (USDE) no longer releases the federal debt-to-earnings rates.
- 3) Defines the following:
 - a) “Debt-to-earnings rates” are the rates established in the federal regulations;
 - b) “Fail rating” has the same meaning as the term is described for purposes of the federal regulations;
 - c) “Federal regulations” mean the federal gainful employment regulations established in Part 668 of Chapter VI of Subtitle B of Title 34 of the Code of Federal Regulations, as those regulations read on January 1, 2017;
 - d) “Zone rating” has the same meaning as the term is described for purposes of the federal regulations; and,
 - e) “Gainful employment program” or “GE program” has the same meaning as the term is defined for purposes of the federal regulations.
- 4) States that it is the intent of the Legislature to continue the student protections in the federal regulations by applying the federal debt-to-earnings rates to California law.
- 5) Finds and declares the following:
 - a) On July 1, 2015, the federal regulations took effect;
 - b) Through the regulatory process, the USDE established debt-to-earnings rates based on the typical loan debt and earnings of students who previously completed a gainful employment (GE) program;

- c) Two debt-to-earnings rates are calculated pursuant to the federal regulations, one based on annual earnings and one based on discretionary income;
- d) The two rates as specified are calculated for each GE program as a measure of the ability of graduates of the GE program to reasonably repay their student loan debt;
- e) For the annual earnings rate, the numerator is the calculated annual loan payment amount, which is an estimate of the annual loan repayment amount based on the median educational debt of the members of the cohort, and the denominator is the higher of the cohort's mean or median earnings;
- f) The discretionary income rate uses the same annual loan payment amount in the numerator as the annual earnings rate, but the denominator is the higher of the mean or median earnings minus 150 percent of the poverty guideline;
- g) To maintain federal Title IV financial aid eligibility, GE programs are required to meet minimum standards for the debt-to-earnings rates of their graduates and are provided a pass, zone, or fail rating;
- h) The pass rating is given to GE programs whose graduates have annual loan payments less than or equal to 8 percent of total earnings, or less than or equal to 20 percent of discretionary income;
- i) The zone rating is given to GE programs whose graduates have annual loan payments greater than 8 percent but less than or equal to 12 percent of total earnings, or greater than 20 percent but less than or equal to 30 percent of discretionary income;
- j) The fail rating is given to GE programs whose graduates have annual loan payments greater than 12 percent of total earnings, and greater than 30 percent of discretionary income; and,
- k) The current federal regulations have been reviewed and upheld in their entirety by two different federal courts and affirmed by the United States Court of Appeals, District of Columbia Circuit.

EXISTING LAW: Establishes the Act until January 1, 2017, and requires BPPE, within the Department of Consumer Affairs (DCA) to, in part, 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 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.)

Federal Law.

- 1) In order to be eligible for funding under the federal Higher Education Act Title IV student assistance programs, an educational program must lead to a degree at a nonprofit or public institution or it must prepare students for gainful employment in a recognized occupation. (20 U.S.C. 1001 et seq.)
- 2) Establishes debt-to-earnings rates to determine whether a gainful employment program prepares students for gainful employment in a recognized occupation. (34 CFR Part 668 et seq.)

FISCAL EFFECT: Unknown

COMMENTS: *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 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.

The aforementioned letter noted that, “...in December 2016, the U.S. Department of Education found that nearly 200 for-profit schools derive more than 90% of their income from federal sources...The list of State Attorney General investigations and enforcement actions against for-profit colleges is long, including actions against: American Career Institute; Ashford University/Bridgepoint Education, Inc.; Corinthian Colleges, Inc.; Career Education Corporation; Education Management Corporation; Daymar College; DeVry University; ITT Tech; National College of Kentucky; and Westwood Colleges, among others.”

Gainful employment components. The gainful employment regulation has two components: accountability and transparency. The accountability component distinguishes between programs that provide affordable training that leads to well-paying jobs and those that do not based on debt-to-earnings rates of their graduates.

Through the regulatory process, the federal Department of Education established a debt-to-earnings ratio based on the typical loan debt and the earnings of students who previously completed the program. Two debt-to-earnings ratios are calculated, one based on annual earnings and one based on discretionary income. The two rates are calculated for each program as a measure of the ability of graduates of the program to reasonably repay their student debt.

For the Annual Earnings Rate, the numerator is the calculated annual loan payment amount (an estimate of the annual loan repayment amount based on the median educational debt of the members of the cohort). The denominator is the higher of the cohort's mean or median earnings. The Discretionary Income Rate uses the same annual loan payment amount in the numerator as the Annual Earnings Rate but the denominator is the higher of the mean or median earnings minus 150% of the poverty guideline.

To maintain Title IV federal financial aid eligibility, programs are required to meet minimum standards for the debt-to-earnings rates of their graduates and are provided the following three ratings: 1) "Pass" – Programs whose graduates have annual loan payments less than or equal to 8% of total earnings or less than or equal to 20% of discretionary income, 2) "Zone" – Programs whose graduates have annual loan payments greater than 8% but less than or equal to 12% of total earnings or greater than 20% but less than or equal to 30% of discretionary income (neither pass nor fail), and Fail – Programs whose graduates have annual loan payments greater than 12% of total earnings and greater than 30% of discretionary income.

A program becomes ineligible for Title IV federal financial aid funding if the program receives a fail rating for two out of three consecutive years or has a combination of zone or fail ratings for four consecutive years. This allows a probationary period where institutions are given the opportunity to improve their failing or in the zone programs. The gainful employment regulation has no impact on student eligibility for federal grants and loans, but affects only which programs are eligible.

The transparency component requires institutions to provide key consumer information to prospective students such as what the typical graduate earns, how much debt they have, and what share of students graduate and find employment in the specified field. Potential ineligibility for programs that receive zone or fail ratings also triggers disclosure to current and prospective students.

Gainful employment status. On January 9th of this year, the USDE released its first debt-to-earnings rates for career training programs and identified over 800 programs with a fail rating that are in potential danger of losing federal financial aid funding. Ninety eight percent of those programs that received a fail rating are offered by for-profit institutions.

On March 6th of this year the acting Assistant Secretary for Postsecondary Education announced a three-month delay in the implementation of the gainful employment regulation and said that "This action is taken to allow the Department to further review the [gainful employment] regulations and their implementation." The author of this legislation contends that "...this delay has confirmed fears that the Trump administration will not enforce the existing gainful employment regulation and may even try to repeal it."

Purpose. The author writes that “Now that the Trump administration has signaled that they are delaying enforcement of the federal gainful employment rules, there is a serious concern that poor performing programs will endure to the detriment of students. Eliminating reasonable oversight and accountability is a mistake that students should not be made to pay for again. We cannot forget the harm caused by Corinthian Colleges to tens of thousands of their students. Government regulations and sanctions such as the gainful employment regulation arrived too late for these students.”

“Therefore the gainful employment regulation is too important to be rolled back. Too often, students in career training programs are charged excessive costs, but do not get the career training they paid for. In many cases, students have been drawn to these programs because of confusing or misleading information. Many receive poor quality training, often for low-wage jobs or in occupations where there are few job opportunities. Many students are also drowning in debt at graduation and end up in default.”

“The intent of AB 1619 would be to lift the existing federal regulation and apply it to California law. The intent is not to be more burdensome to institutions, but merely ask them to comply with what is already in effect. While California cannot take away federal financial aid, a way we are able to enforce the gainful employment regulation is [BPPE].”

Arguments in support. The Center for Public Interest Law and the Veterans Clinic write that, “...last month, we were part of a coalition of 53 advocacy groups who sent a letter urging congress to uphold gainful employment regulations along with other regulations, to prevent waste, fraud, and abuse in higher education. The federal gainful employment regulation has already had a significant positive impact. The mere threat of sanctions under this regulation prompted many colleges to eliminate their worst performing programs, to freeze tuition and implement other reforms to improve outcomes for their graduates. Delaying, weakening, or repealing the gainful employment regulation would lead to a new race to the bottom as unscrupulous schools compete to enroll as many students as possible without regard to the quality of training, the student’s preparation, or job prospects.”

The Institute for College Access and Success believes that “...the goal of the gainful employment rule is to prompt colleges to improve their program offerings, so that programs are not routinely leaving students with debt that they cannot reasonably repay. These issues are particularly salient for California, as Californians have been disproportionately harmed by for-profit institutions that fail to deliver on their promises to students. The vast majority of students affected by the closure of Corinthian Colleges in 2015 were enrolled in California campuses of Heald, Everest, or Wyotech Colleges. The majority of students enrolled at Westwood College – a troubled for-profit college chain that stopped enrolling new students in late 2015 – were enrolled in California campuses. Of the 56 campuses of Marinello Schools of Beauty, which closed its doors unannounced in 2016, 39 were located in California...enabling AB 1619 to move forward will allow for conversations about how to best protect Californians to continue, irrespective of federal law, and we are committed to working with the author’s office to ensure the bill’s provisions are appropriate and workable for California.”

Arguments in opposition. The opposition raised several points of concern regarding the design and implementation of AB 1619. The California Coalition of Accredited Career Schools notes that “...the fundamental flaw under AB 1619, is that the proposal assumes the Bureau of Private Postsecondary Education (BPPE) can attain data and perform calculations in the same manner as

the U.S. Department of Education currently performs. This is a huge misgiving and one the author seems to recognize. There is no logistical way the Bureau could undertake this enormous task. Again, the Department collects the federal data made available through [the Social Security Administration] and through institutions and conducts their analysis. This mandate would place unnecessary, costly and insurmountable task on an already thin Bureau.”

The California Association of Private Postsecondary Schools notes that the provisions of this measure goes beyond those in current federal regulations, writing that “...your measure would prohibit an institution from operating an education program indefinitely in California if it fails to meet the U.S. Department of Education Gainful Employment (GE) rules. This permanent ban is inconsistent with Federal law, which allows a failed program to continue albeit without Title IV eligibility. Federal GE also allows a school to make improvements and reapply for eligibility whereas your bill institutes a permanent ban.”

The above groups share an overarching concern that this bill is premature, with the University of Phoenix, noting that “...to date, there has been no evidence to suggest that the new Administration is going to eliminate the GE regulations. In fact, recent reporting delays were entirely ministerial in nature to ensure that institutions had an opportunity to appeal calculations before reporting final numbers and also to give the Department of Education time to an as yet developed reporting matrix.”

Policy considerations. Staff notes that the penalties of this legislation are more stringent than those detailed the federal GE regulations, though the multi-year process detailed above in “gainful employment components” is the same. In order for a program to no longer enroll new students, that program must fail for two consecutive years (where annual loan payments are greater than 12% of total earnings and greater than 30% of discretionary income), or have a combination of “zone” and “fail” rating over four consecutive years.

The provisions of this bill also do not contain an appeals process for the affected intuition. Yet, given that 98% of the programs that earned a “fail” rating in the GE number published in January were from private postsecondary institutions, and given California’s recent history with institutions like the Corinthian Colleges or the Marinello Schools of Beauty closing their doors, the committee may wish to consider if an appeals process should be warranted at all.

Data availability. Staff notes that the data necessary for BPPE to enforce the provisions of this bill is currently available for use. In the event that GE is suspended or repealed, an alternate method of collecting data would be necessary to enforce the provisions of this bill. AB 1619 provides for the promulgation of regulations specifically in the event that the necessary data is no longer available. To note, a bill under consideration in this committee, AB 1611 (McCarty), would provide a method for the collection of student data that would be implemented upon the suspension or repeal of federal GE regulations.

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 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 ...”.

REGISTERED SUPPORT / OPPOSITION:

Support

CALPIRG
Center for Public Interest Law
Children's Advocacy Institute
Consumer Federation of California
Consumers Union
East Bay Community Law Center
Housing and Economic Rights Advocates
Military Child Education Coalition
Public Counsel
Public Law Center
SEIU California
The Education Trust–West
The Institute for College Access & Success
Veteran's Legal Clinic

Opposition

American Career College
California Association of Private Postsecondary Schools
California Coalition of Accredited Career Schools
Institute for Business & Technology
Professional Beauty Federation of California
University of Phoenix
West Coast University

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