

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1340 (Chiu) – As Amended April 1, 2019

[Note: This bill is doubled referred to the Assembly Committee on Business and Professions and will be heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Private postsecondary education: California Private Postsecondary Education Act of 2009

SUMMARY: Prohibits an institution offering a program intended to prepare a student for gainful employment in a recognized profession from enrolling additional California residents above the number enrolled in the program the previous year if the program does not meet the standard for passing the federal debt-to-earnings rates measure, and from enrolling any California residents if the program fails the federal debt-to-earnings rates measure. Specifically, **this bill:**

- 1) Requires an institution offering a program intended to prepare a student for gainful employment in a recognized profession to satisfy both of the following requirements:
 - a) If the program does not pass the federal debt-to-earnings rates measure established in the Code of Federal Regulations, (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), the institution shall limit the number of new California residents enrolled in the program to the number of new California residents enrolled in the program the previous year; and,
 - b) If the program fails the federal debt-to-earnings rates measure established in the Code of Federal Regulations, (programs whose graduates have annual loan payments greater than 12% of total earnings and greater than 30% of discretionary income), the institution shall not enroll any new California residents in the program.
- 2) Authorizes the Bureau for Private Postsecondary Education (BPPE) to exempt a program from the requirements listed above if the program is one in which less than 50 percent of the students have had a loan arranged for them by the institution.
- 3) Defines “loan” to mean any agreement by the student to make future payments that extend beyond the term of enrollment.
- 4) Requires the BPPE to adopt regulations to define gainful employment based, as much as is practicable, on the intent of Section 668.403 of Title 34 of the Code of Federal Regulations, as that section read on January 1, 2017.
- 5) Requires institutions, as a condition for authorization to operate, and in order to demonstrate compliance with the requirements listed in “1” above, to annually report to the BPPE all of the following:

- a) Identifying information for each student sufficient to match to wage data from the Employment Development Department (EDD); and,
 - b) Education debt broken down by individually identified student, and by student cohort, including the annual repayment amount.
- 6) Defines “student cohort” to mean the group of students who complete an educational program in a particular year.
 - 7) Requires the BPPE to adopt regulations necessary to implement the data reporting detailed above, including further specifying the data that shall be reported by an institution to the bureau for purposes of the bureau matching reported data with wage data from the Employment Development Department.
 - 8) Requires BPPE to match the data reported by institutions, as specified, and any regulations adopted, as specified, with quarterly wage data from the Employment Development Department pursuant to Section 1095 of the Unemployment Insurance Code.
 - 9) Authorizes the BPPE to may waive the data reporting and data matching if it is determined that sufficient federal data is available to establish if a campus has met the gainful employment standard detailed in “#1” above.
 - 10) Enables the BPPE to access and use any relevant EDD quarterly wage data necessary to perform the gainful employment data match pursuant to Section 94892.6 of the Education Code, including individually identifiable information. Requires BPPE to keep the wage data confidential.

EXISTING LAW:

- 1) Establishes the California Private Postsecondary Education Act of 2009 (Act) until January 1, 2021, 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 US 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 STRF to provide refunds to students affected by the possible closure of an institution/school. (Education Code (EDC) Section 94800 et. seq.)
- 2) Requires an institution, except as specified, offering a degree to have either an accreditation by an accrediting agency covering the offering of at least one degree program by the institution, or an accreditation plan, approved by the BPPE, to become fully accredited within five years of the BPPE’s issuance of a provisional approval to operate the institution. (EDC Section 94885)
- 3) Requires the Director of Employment Development to permit the bureau to access relevant quarterly wage data, as necessary, for the BPPE’s evaluation and reporting of program performance outcomes as required and permitted by various state and federal laws, including

the federal Workforce Innovation and Opportunity Act of 2014. Existing law makes a person who knowingly accesses, uses, or discloses this confidential information without authorization guilty of a misdemeanor. (Unemployment Insurance Code Section 1095)

- 4) 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. Section 1001 et seq.)
- 5) Establishes debt-to-earnings rates to determine whether a gainful employment program prepares students for gainful employment in a recognized occupation. (34 Code of Federal Regulation Part 668 et seq.)

FISCAL EFFECT: Unknown

COMMENTS: *Purpose of the bill.* According to the author, “AB 1340 will implement a state-level version of the federal Gainful Employment (GE) rule in California for schools governed by the Act, with a few changes to account for the state setting. California cannot control access to federal financial aid – the enforcement mechanism in the federal GE rule – but can regulate a program’s authority to enroll new students. This bill would prohibit or limit new resident enrollment in career training programs that fall into the “fail” or “zone” category based on the ratio of a typical program graduate’s debt-to-income, as established in the federal GE rule.”

“Because the Trump Administration has halted the data collection and matching required to implement the federal GE rule, this bill proposes a different approach to collecting wage and student debt information. AB 1340 will utilize state Unemployment Insurance data on wages and student debt information provided by institutions to the Bureau of Private Postsecondary Education to calculate the debt-to-earnings rates for programs. By taking a more proactive approach and tracking what schools are providing good value and quality programs to students, this will potentially alleviate some of the back-end enforcement challenges the Bureau is facing. Protecting students from harm in the first place is more effective than making them whole once the harm has already occurred.”

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 \$1.5 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 GE 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 are not based on the 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),
- 3) “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 2017, 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. 98 percent of those programs that received a fail rating are offered by for-profit institutions. More than 350,000 students graduated from these worst-performing programs with nearly \$7.5 billion in student loan debt. In California specifically, 84 programs failed the GE test – all but two of which were offered by for-profit colleges – and another 183 scored in the “zone” range. Over a two-year period, these substandard California programs graduated about 56,000 students who left school with \$934 million – close to \$1 billion – in student loan debt.

The USDE moved to rescind the GE in August of 2018, but missed a crucial November 2018 deadline. In court filings USDE cited as a reason for the delay the large number of public comments -- more than 38,000 – that it was required to consider before issuing a final rule. The delay means that the earliest USDE will be able to rescind GE will be July of 2020.

Even with the GE regulation still operative, USDE announced that the U.S. Social Security Administration, which provided the data until this year, has let an information-sharing agreement with the department lapse. Without that critical data-sharing element in place, USDE is unable to evaluate if institutions are in compliance with GE.

Arguments in support. A coalition of student, veteran, civil rights, and higher education advocates jointly wrote to the committee in support of AB 1340. They noted that, “...it is sadly too common that students take out thousands of dollars in student loans to enroll in career training programs they believe will lead to a job, only to discover - too late - that they have unmanageable debt with no return on investment. In an effort to address this problem, the U.S. Department of Education engaged experts and stakeholders over the course of several years to develop the GE regulation, finalized in 2014. The GE rule was an effort to measure career education programs’ performance in “prepar[ing] students for gainful employment in a recognized occupation,” and to prevent programs that leave students with debt and no means to pay it back from continuing to receive federal financial aid.”

“Unfortunately, the Trump Administration and Education Secretary Betsy DeVos have proposed to rescind the GE rule completely, leaving these programs free to continue enrolling students without being held accountable for their poor performance. The U.S. Department of Education estimates that eliminating the gainful employment rule will cost taxpayers \$5.3 billion in financial aid because of increased spending on programs that fail to meet established

standards...By taking a proactive approach and tracking what schools are providing quality programs at a good value to students, AB 1340 seeks to reduce the number of enforcement actions the BPPE will have to undertake....AB 1340 would further reduce harm to students by prodding schools to improve their value proposition for students.”

Arguments in opposition. The California Association of Private Postsecondary Schools writes that, “AB 1340 as amended cannot possibly work. The Social Security Administration rejected providing wage data for GE, which was a main reason the regulations were withdrawn. While a surface review might cause one to think that the State EDD Unemployment Insurance data could be used as a substitute, a more in-depth look reveals that Unemployment Insurance (UI) data cannot substitute for the wage and hour data produced by the US Social Security Administration. And it does not contain data for any student who is not a California taxpayer, of which there are many enrolled at our schools. Besides the obvious legal issues involved in using UI data for a Higher Education program review, there other factors that make this bill a non-starter:”

- 1) “There are no student identifiers available from EDD that can provide a 12-month look-back at individual wage data that can tie a student’s wages to a specific educational program. Wages can come from many sources and no conclusions can be reached.”
- 2) “Wages are not reported by years and are not available for use in the succeeding year, thus the bill fails on reporting.”
- 3) “Attempting to modify a system of UI into a student-based wage reporting system certainly violates student FERPA rights of non-disclosure under Federal law.
- 4) “As UI is a Federal program operated by the State, federal permissions would have to be obtained which are highly unlikely.”
- 5) “EDD is legally prevented from using social security numbers as identifiers. Each student would have to be assigned a special number which would be very expensive, require massive programing at the EDD and BPPE and take years to implement.”
- 6) “The information sought under this new and very complex bill is already reported by Institutions and available for review by Accreditors, USDOE and the State.”

“There is no reason or method that would allow the BPPE and the EDD to implement a GRE as proposed in this bill without spending millions of additional dollars and years of staffing and modifying management information systems to give a report that is already available.”

Policy considerations. Staff notes that the penalties of this legislation are more substantially more stringent than those detailed in federal GE regulations.

The committee recommends that the bill be amended to more closely conform with the federal GE standard requiring a rating of “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. These amendments will create a probationary period, giving under-performing programs an opportunity to improve.

There is no explicit reference in this bill to an appeals process when an institution has concerns about the veracity of wage data. Moving forward, the author should work with stakeholder groups to craft a data appeals process.

Data availability. Staff notes opposition concern regarding the use of EDD wage data, and that provisions of this bill authorize the BPPE to waive the data reporting and data matching if it is determined that sufficient federal data is available to establish if a campus has met the gainful employment standard.

Staff also notes that the President signed an Executive Order on March 21st, 2019 pertaining to postsecondary education data. The Executive Order requires the Secretary of Education to:

- 1) Make available, by January 1, 2020, a website and mobile application to inform federal student loan borrowers of certain information.
- 2) Expand and update annually the College Scorecard (or successor document) with program-level data for each certificate, degree, graduate, and professional program, for former students who received federal aid:
 - a) Estimated median earnings;
 - b) Median Stafford, Graduate PLUS, and Parent PLUS loan debt; and,
 - c) Student loan default and repayment rates.
- 3) Expand and update annually the College Scorecard with institution-level data, providing the aggregate for all programs for former students who received federal aid:
 - a) Student loan default and repayment rates;
 - b) Graduate PLUS default and repayment rates; and,
 - c) Parent PLUS default and repayment rates.

Employment information currently required by the state. Current law requires an institution regulated by the BPPE to provide a prospective student with a School Performance Fact Sheet containing information on completion rates, job placement rates, license examination passage rates and salary or wage information, among other things, each rate is based on a formula outlined in statute:

- 1) Job placement rate is calculated by dividing the number of graduates employed in the field by the number of graduates available for employment for each program.
- 2) Completion rate is calculated by dividing the number of on-time graduates by the number of students available for graduation.
- 3) License examination passage rates for the immediately preceding two years is calculated by dividing the number of graduates who pass the exam by the number of graduates who take the licensing exam the first time after completing the education program.

- 4) Salary and Wage information, consisting of the total number of graduates employed in the field and the annual wages or salaries of those graduates.

Prior legislation. AB 1619 (Berman, 2017), required the BPPE to prohibit institutions that are subject to the provisions of 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. On June 11, 2018, the bill was amended out of the jurisdiction of the Assembly Higher Education Committee to deal with sexual assault.

AB 1611 (McCarty, 2017), required certain debt-dependent programs to submit information to the BPPE upon the repeal or suspension of specified federal regulations. This bill was held by the Assembly Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Conference of the American Association of University Professors
California Low-Income Consumer Coalition
Campaign for College Opportunity
Center for Public Interest Law
Children's Advocacy Institute
Consumer Federation of California
Consumer Reports Advocacy
Housing & Economic Right Advocates
Public Advocates, Inc.
Public Counsel
Public Law Center
SEIU California
The Century Foundation
The Institute for College Access and Success
Veterans Education Success
Veterans Legal Clinic

Opposition

California Association of Private Postsecondary Schools
Enlisted Association of the National Guard of the United States
Professional Beauty Federation of California
University of Phoenix
Walden University