

**CALIFORNIA DEPARTMENT OF JUSTICE**

**TITLE 11. LAW**

**DIVISION 1. ATTORNEY GENERAL**

**CHAPTER 10. BUREAU FOR PRIVATE AND POSTSECONDARY EDUCATION  
EXEMPTION VERIFICATION**

**FINAL STATEMENT OF REASONS**

**UPDATE OF INITIAL STATEMENT OF REASONS**

There have been no changes to the information described in the Initial Statement of Reasons

**SUMMARY OF COMMENTS AND DEPARTMENT RESPONSES**

Written comments received during the 45-day public comment period are included in the rulemaking file under Exhibit 7. The Department received the following public comment:

*Comment:* Thank you for the opportunity to comment on the proposed regulations to implement AB 70 of 2020, relating to colleges that claim to have converted from for-profit to nonprofit control. We are pleased that the fiscal analysis indicates that the Attorney General intends to have experts make an independent assessment to determine whether an institution meets the law's requirements. However, we are concerned that the regulations could give the impression that a college's attestations alone might be an adequate assurance. We recommend that the regulation be amended to make it clear that the decision regarding an institution's eligibility is based not on the attestations but instead on the independent expert analysis by the Attorney General. We suggest adding at the end of (d) the following: "to allow for a complete and independent analysis by the Attorney General." The paragraph would read:

(d) The Application for Verification will not be deemed received under Education Code section 94874.1, subdivision (d), until the Attorney General has received all the information the Attorney General determines is necessary for the required verification, including, all information required by the Application for Verification, and all additional information requested by the Attorney General to allow for a complete and independent analysis by the Attorney General.

*Response:* No change has been made in response to this comment. The regulation is reasonably clear and the proposed additional language is unnecessary. The applicant is required to provide attestations under penalty of perjury, and "fair value" must be demonstrated by one of the means listed in Education Code section 94874.1, subdivision (c). Further, the Attorney General can require the nonprofit institution to submit additional information to further evaluate the Application for Verification. As to the commenter's statement supporting the Attorney General's use of experts to "make an independent assessment to determine whether an institution meets the law's requirements," the comment is unclear. The fiscal analysis states that the Attorney General intends to have an Investigative Auditor analyze materials submitted by the applicant.

## **LOCAL MANDATE DETERMINATION**

The proposed regulation does not impose any mandate on local agencies or school districts.

## **ALTERNATIVES DETERMINATIONS**

In accordance with Government Code section 11346.9, subdivision (a)(4), the Department has determined that no alternative it considered, or that it otherwise identified, or was brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, 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.

Members of the public did not present any alternatives.

## **ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES**

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).)

## **DOCUMENTS INCORPORATED BY REFERENCE**

None.

## **NON-DUPLICATION**

Some of the regulations may repeat or rephrase in whole or in part a state or federal statute or regulation. This was necessary to satisfy the clarity standard set forth in Government Code section 11349.1, subdivision (a)(3).