

## ADDENDUM B

### SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE FIRST MODIFICATION NOTICE PERIOD OF OCTOBER 9, 2015 THROUGH OCTOBER 24, 2015.

#### A. Comments from Margaret Reiter

**COMMENT NO.11.1:** Margaret Reiter (see, p. 1) stated that the Bureau did not revise the Initial Statement of Reasons (ISOR) provided with the modification, and thus, it was not clear how the Bureau made the choices it made in the revised text.

Response: The Bureau disagrees with the comment. The California Administrative Procedures Act (APA) does not require that the ISOR be revised when making modifications. Responses to comments made during any public comment period are only required to be in the Final Statement of Reasons (FSOR).

**COMMENT NO. 11.2:** Margaret Reiter (see, p. 1) stated that the modified text failed to include any regulations to implement section 94913 of the Education Code regarding website requirements for institutions.

Response: The Bureau has accommodated this comment by adding a new section to the proposed text, namely, section 74117, requiring that institutions provide clear and conspicuous links to the requirements in section 94913(a) of the Education Code on the homepages of the institutions' websites.

**COMMENT NO. 11.3:** Margaret Reiter (see, p. 2) stated that the modification does not propose any language for accreditation- related disclosures based on Education Code section 94909(a)(16).

Response: The Bureau responds that this comment is not directed at the proposed regulation or the modified text and is therefore irrelevant.

**COMMENT NO. 11.4:** Margaret Reiter (see, p. 2) provided grammatical edits for clarifying section 74110(a)(3) related to institutional and programmatic accreditation.

Response: The Bureau agreed with the comments and made the suggested edits.

**COMMENT NO. 11.5:** Margaret Reiter (see, pp. 2-3) suggested that all titles of tables and column headings in the Performance Fact Sheet should be in bold and that the title of the Performance Fact Sheet should likewise be bold and in 14-point font and identify the program to which it applies. Furthermore, she made language suggestions for the format for some titles.

Response: The Bureau agreed that the titles and column headings should be in bold and furthermore that all should be in 14-point font, and that the school should identify the program for which the Performance Fact Sheet pertains. The Bureau decided not to accommodate the comment related to suggested language for some titles as unnecessarily

prescriptive. The Bureau also added that a separate Performance Fact Sheet must be prepared for each program.

**COMMENT NO. 11.6:** Margaret Reiter (see, p. 3) suggested with regard to subsection 74112(d)(3)(A)(related to the “gainfully employed” definition) that removing the “or” when identifying the “Detailed Occupation” was necessary for clarity reasons.

Response: The Bureau agreed and removed the “or” reference.

**COMMENT NO. 11.7:** Margaret Reiter (see, pp. 3-4) stated with regard to subsection 74112(d)(3)(B) related to “time periods that qualify a job to be counted as a graduate’s job placement” that some language was not as clear as it could be because of various conjunctions and she provided an alternative.

Response: The Bureau agreed in part. The suggested format did help to clarify the subsection. However, the Bureau felt a variation of the format would further clarify by placing each type of employment under its own subsection.

**COMMENT NO. 11.8:** Margaret Reiter (see, p. 4) stated with regard to subsection 74112(d)(3) related to the 30 minimum hours needed to constitute full-time employment that the Bureau provides no particular rationale for choosing 30 hours, and should choose a higher standard between 30 hours and 40 hours.

Response: The Bureau rejects the comment as not relevant because the 30 hour minimum for fulltime employment was not a part of the modification. Nevertheless, the modification added documents to the file. One of the documents contains the specific section of the Affordable Care Act (ACA) that provides that 30 hours per week or more constitute fulltime employment. The Bureau chose the standard on this basis. The ACA is a recent Act that has an actual definition of full-time employment, while the 40 hours per week suggested by the commenter uses a standard under the California Labor Code to determine when overtime is paid.

**COMMENT NO. 11.9:** Margaret Reiter (see, p. 4) also stated with regard to subsection 74112(d)(3) that the provision regarding an employer’s continued expectation of employment lacked clarity for anyone trying to enforce it. She provided suggested language as part of her alternative.

Response: The Bureau accepted the alternative language and placed it within the new format for the subsection. [Note, however, that after consideration of the numerous comments from the directly affected public related to the amended language, the Bureau decided to remove the provision altogether.]

**COMMENT NO. 11.10:** Margaret Reiter (see, p. 4) also stated with regard to subsection 74112(d)(3) that the statement from the student of their intention for part-time employment should be written by the student in their own words, not just signed by the student.

Response: The Bureau rejected this comment as unnecessarily restrictive.

**COMMENT NO. 11.11:** Margaret Reiter (see, p. 5) also provided alternative text for section 74112(d)(3) based on her comments Nos. 11.6 through 11.10 above.

Response: As noted above, the Bureau agreed to some of the commenter's language. However, the Bureau also incorporated language from other commenters in this subsection as well and adjusted for additional clarity where subdivisions (A), (B), and (C) each dealt with a different employment situation.

**COMMENT NO. 11.12:** Margaret Reiter (see, p. 5) stated with regard to subsection 74112(f)(related to the cost of educational program disclosure) that the title needs to be in bold per her earlier comment.

Response: The Bureau agreed and made the title bold and 14-point font.

**COMMENT NO. 11.13:** Margaret Reiter (see, pp. 5-6) pointed out with regard to subsection 74112(g)(related to student loan/debt information) that one "on-time" reference had not been properly deleted with the other deletions in the modification.

Response: The Bureau agreed and deleted the noted "on-time."

**COMMENT NO. 11.14:** Margaret Reiter (see, p. 6) stated with regard to subsection 74112(h)(related to completion rates) that the name of the program should be included in the title of the document and removed from the title of the tables, and that name of the table should be in bold. She further suggested use of "On-time Graduation Rates" for the title rather than "On time Graduate Completion Rates."

Response: The Bureau agreed in part. The Bureau agreed that the title should be in bold and added that it also be in 14-point font. The Bureau disagreed with removing the name of the educational program. Performance Fact Sheets are often several pages in length due to the information being conveyed. Keeping the program title on each table assures that a perspective student will not become confused about the program that is associated with the information in the table. The Bureau further amended the title to "On-time Completion Rates (Graduation Rates)" for clarity.

**COMMENT NO. 11.15:** Margaret Reiter (see, pp. 6-7) stated with regard to subsection 74112(i)(3)(related to the employment list required by Education Code section 94910(f)(2)) that Education Code section 94929.7(b) requires disclosure of the names of the employers who actually hire graduates and the actual employment positions. She also stated that the regulation should state that the school had to provide this information along with the Performance Fact Sheets, and provided proposed text.

Response: The Bureau disagrees with the comment. Education Code section 94910(f)(2) does not require that institutions provide the names of the employers but rather, that the institution disclose to students "where he or she may obtain from the institution a list of

the employment positions determined to be within the field for which a student received education and training for the calculation of job placement rates.” The intent of the regulation is to specify that the required list of employment positions must identify the employment positions by using the six-digit level of the Standard Occupational Classifications Code. Further, the preamble of section 94910 already requires that the disclosure be provided to students prior to enrollment and as part of the Performance Fact Sheet.

**COMMENT NO. 11.16:** Margaret Reiter (see, p. 7) stated with regard to subsection 74112(i)(4)(related to the job placement rate) that in addition to a definition provided in statute, another regulatory reference should be added to avoid confusion.

Response: The Bureau agreed and included the relevant regulatory reference to the proposal.

**COMMENT NO. 11.17:** Margaret Reiter (see, pp. 7-8) stated with regard to subsection 74112(i)(4)(related to the job placement rate and table) that the name of the program should be included in the title of the document and removed from the title of the tables, and that name of the table should be in bold. She further commented that the job placement table should be modified to reflect two columns for both full-time and part time work.

Response: The Bureau agreed in part. The Bureau rejected that the name of the program should be removed from the title of the table and included in the title of the document. The Bureau is already requiring that a separate Performance Fact Sheet be created for each program. Also, the name of the educational program in close proximity to the table promotes clarity for students reading the table. The Bureau agreed with the comment to bold the name of the table. The Bureau also agreed with the comment to include two columns in the job placement table for both “Graduates Employed in the field 20 to 29 hours per week” for part time work and “Graduates Employed in the field at least 30 hours per week” for full-time work.

**COMMENT NO. 11.18:** Margaret Reiter (see, pp. 8-9) stated with regard to the self-employment/freelance work disclosure requirement in subsection 74112(i)(5) that the purpose of this subsection was to ensure that students entering programs for which the kinds of jobs available after graduation are almost never full-time understand that fact. She suggested that the disclosure should be narrowly tailored and not apply simply to “any programs that may result in this type of work style” and provided alternative language.

Response: The Bureau agrees with some of the proposed alternative language which would help to further clarify when the disclosure is required. Therefore, the Bureau has incorporated some, but not all of the suggested language into the proposal. Specifically, the Bureau rejected the language of “the program is not intended to prepare you for regular, full-time employment” and the “work available to graduates of this program is usually for free-lance or self-employment.” The Bureau found it sufficient to amend the text to state that the disclosure is required where “the majority of graduates obtain jobs in this type of work.”

**COMMENT NO. 11.19:** Margaret Reiter (see, p. 9) disapproved of the last statement in the self-employment disclosure in subsection 74112(i)(5) related to the student acknowledging his or her understanding of the disclosure, and provided an alternative statement. The concern was that “unscrupulous schools” could obtain signatures to the form without the student having read or understood it.

Response: The Bureau agreed in part. The Bureau made changes to the last statement based on the comment, but did not use the suggested alternative or remove the language related to the student’s acknowledgement and initials. The Bureau believed it was important to have the school obtain the student’s initials to ensure that the disclosure was actually made to the student signifying that the student understood that either a majority or all of the school’s graduates are employed in the self-employment or freelance work style.

**COMMENT NO. 11.20:** Margaret Reiter (see, p. 9) noted, regarding subsection 74112(j), that not all of the phrases had been altered to change license “examination passage” to license “exam passage.” She also asserted that “passage” is not the correct term and that it should be “pass” rate. Additionally, she repeated the previous comment about titles in bold, and she asserted that the name of the program should be included in the title of the document and removed from the title of the tables.

Response: The Bureau generally disagreed with the comments. The dictionary reference showed that passage has multiple definitions, not just the one presented in the comment. Furthermore, the Bureau decided to restore “license examination passage” throughout the section as that is the same term used in the statute and the Bureau desired to use the same term as the statute when feasible to avoid confusion. Additionally, the Bureau rejected that the name of the program should be removed from the title of the table and included in the title of the document. The Bureau is requiring that a separate Performance Fact Sheet be created for each program and the name of the educational program in close proximity to the table promotes clarity for students reading the tables. The Bureau agreed with the comment to bold the name of the table.

**COMMENT NO. 11.21:** Margaret Reiter (see, p. 9) stated, regarding subsection 74112(k), that the name of the educational program should be removed from the title of the tables and instead included in the title of the document and the name of the table should be bolded.

Response: The Bureau accommodated the comment regarding the bolding of the name of the table but rejected that the name of the program should be removed from the title of the table and included in the title of the document. The Bureau is instead requiring that a separate Performance Fact Sheet be created for each program. The name of the educational program in close proximity to the table promotes clarity for students reading the tables.

**COMMENT NO. 11.22:** Margaret Reiter (see, p. 10) made four suggestions regarding subsection 74112(l) for the purposes of clarity: (1) specify that the definitions are to be included

after the disclosures; (2) clarify that “Graduates Available for Employment” apply to graduates in the reporting year; (3) change the last sentence in the definition of “Graduates Employed in the Field”; and (4) simplify the definition of “No Salary Information Reported.”

Response: The Bureau largely accommodated the comments. The Bureau determined it was unnecessarily prescriptive to specify that the definitions are to be included after the disclosures; they must be included all in one place in the Performance Fact Sheet. The definitions replace the numerous footnotes that currently follow all the tables, placing them all in one easy to reference place. The Bureau also disagreed with the second suggestion regarding clarifying the reporting year. Reporting year is for institutions, “calendar years” are used on the Performance Fact Sheets. The Bureau agreed with the other two suggested changes and incorporated them into the proposal.

**COMMENT NO. 11.23:** Margaret Reiter (see, pp. 10-11) suggested additional language to section 74112(m) to clarify the intent of the regulation. Specifically, she recommended the addition of “for each program” to ensure that the information is provided by program rather than in an institutional dump of data. She proposed language related to documentation requirements for students determined to be unavailable for graduation or employment.

Response: The Bureau accommodated the comment and added the clarifying language of “for each program” and the documentation requirement language “for each student determined to be unavailable for graduation or unavailable for employment, the identity of the student, the type of unavailability, the dates of unavailability, and the documentation of the unavailability.”

**COMMENT NO. 11.24:** Margaret Reiter (see, pp. 11) also proposed the language “and the same documentation about the source of information and the institutional representative who obtained the information as is required in (7)” for section 74112(m)(8).

Response: The Bureau adopted the first half of the commenter’s proposed language (see Response to Comment 11.23), but not this last part because it found it duplicative to the “documentation of the unavailability” text and the provision in section 74112(m)(9).

## **B. Comments from Tom Babel**

**COMMENT NO. 12.1:** Tom Babel suggested in regards to subsection 74112(d)(3)(B)(iii) that students who need a degree to keep their current employment position be counted as gainfully employed. He further suggested that in order to determine which graduates or students meet the criteria, institutions would capture a statement from either the employer or student confirming that the degree is needed to keep their job.

Response: The Bureau agreed that such a classification exists for gainful employment. The Bureau added new language to the proposal to address graduates who may have been employed when enrolling at the institution. It includes the specific scenario provided by the commenter that the degree is required as a condition of continued employment and requires that such a situation be confirmed by a statement from the employer or graduate.

**C. Comments from Sharon Djemal, Leigh Ferrin, Ed Howard, Angela Perry, and Noah Zinner**

**NOTE RE: COMMENT NO. 13** is signed by Sharon Djemal, Leigh Ferrin, Ed Howard, Angela Perry, and Noah Zinner. For ease of not repeating the names of all signatories, they will be referred to collectively as “Commenters” hereafter.

**COMMENT NO. 13.1:** Commenters (see, pp. 1-2) stated that the 30 hour per week, 21 day working requirement is not satisfactory and should be increased to a 90 day period of employment, or at least 45 days, and at least 35 hours per week. The Commenters point to various sources, including the Bureau’s Advisory Committee recommendation for a “45-day (5 week)” requirement, an earlier version of the bill AB 2296 with a “13 week (approximately 90 day)” requirement, as well as the United States Census Bureau’s 35 hours per week reference.

Response: The Bureau responds that the gainful employment standard of 30 hours per week and 21 days working was not part of the modification and therefore the comment is irrelevant.

However, the Bureau responds that it carefully considered various sources prior to making its decision, and the modification added two documents to the file. The first was the Affordable Care Act (ACA). For purposes of the ACA, fulltime employment is defined as 30 hours per week. The Bureau chose this standard for the minimum hours because the ACA is recent legislation at the federal level. Other comments have referenced the California Labor Code as providing that an employee gets overtime after 40 hours per week, and these Commenters suggest 35 hours per week as the standard for gainful employment. The Bureau concluded there is no “magic number” in the employment context that defines full time employment. The Bureau believes that adopting the definition in the ACA is reasonable as it reflects a contemporary employment standard.

As for the number of days employed to count for “gainful employment,” the Bureau recognizes that the Advisory Committee made a recommendation but the recommendation that was voted on was for five weeks (or 35 days), not the 45 days claimed by the Commenters. The second document added to the file with this modification was the accreditation manual for the Accrediting Bureau of Health Education Schools (ABHES), which requires graduates to be employed for 15 days in order to be counted as employed. The Bureau could find no other accreditor that had a requirement beyond “is employed,” and other commenters suggested this “is employed” standard. The Bureau chose 21 days, which is greater than the 15 days used by the ABHES accreditor and more than the mere “is employed” standard.

Further, the Bureau does not agree with the Commenters that an earlier version of AB 2296 that incorporated a 13 week (or approximate 90 day) time shows a legislative intent for the minimum time to be 90 days. Because that reference was removed from the final

bill, if anything, it suggests a legislative intent to not adopt 90 days as the requirement for gainful employment.

Moreover, Education Code section 94928(e)(1) states that placement reporting is to be based on graduates who are gainfully employed within six months of graduation (or within six months after the announcement of the examination results from first available exam). Accordingly, if a graduate must be employed for 90 days to be counted as gainfully employed within six months after graduation, the graduate must necessarily find a job within three (3) months of graduation to be counted as gainfully employed, which is not a long time. As addressed in previous comments, a 90 day employment period would take half of the six month period set forth in statute, thus undercutting the Legislature's time allowance for an institution's gainful employment snapshot to be taken.

In addition to the limited window for capturing the data, the Bureau believes that with an increase in the number of days to 90 days, too many variables come into play for why a graduate could leave a job which are not reflective of whether the program prepared them for employment in the field, including personality conflicts, change of heart about the type of work or the employer, and various life or family events which may require a change in employment.

Finally, the Commenters suggest that institutions could pay employers to temporarily employ students for 21 days so that the institutions could count those students as placements. While the Bureau agrees that institutions would be less likely to successfully persuade employers to temporarily employ students for longer periods (such as 45 or 90 days), in order to be counted as placed and then terminated, the Bureau rejects this comment as the basis for changing the days to 45 or 90 days because an institution intent on using such techniques could conceivably use the same technique whether the days are 21, 45, or 90.

**COMMENT NO. 13.2:** Commenters (see, p. 3) asserted with regard to subsection 74112(d)(3)(B)(ii) related to self-employment that institutions are motivated to indicate that their graduates are self-employed, thus avoiding the appearance of unemployment for reporting purposes. Commenters provided additional language that purports to better evidence self-employment.

Response: The self-employment section of the definition of gainful employment was not modified, thus the comment is irrelevant. However, the Bureau responds that the items which the Commenters included in their alternative language would also be evidence of self-employment, and the proposal allows for such evidence by using the phrase "reasonably evidenced by, but not limited to..." The regulation provides samples and the exception of business cards for such evidence. The Bureau does not believe that requiring a handwritten statement by the student or a statement from a client as to the self-employment of the student is necessary to evidence self-employment.

**COMMENT NO. 13.3:** Commenters (see, p. 4) suggested that an additional definition for "total charges" is needed beyond that provided by section 94670 of the Education Code. The



Commenters point to other sections within the regulations where charges and fees and economic loss provide some definition.

Response: This was not a part of the modification and thus is irrelevant. “Total charges” is defined in section 94670 of the Education Code.

**COMMENT NO. 13.4:** Commenters (see, p. 4) suggested with regard to subsection 74112(j) regarding the examination passage rate that the number of graduates for each year be included on the “License Examination Passage Rates” as they assert that institutions give practice exams and discourage students who do not do well from taking the actual exam.

Response: The Bureau agreed in part with the Commenters and added a column for the “Number of Graduates in Calendar Year.” While the number of graduates is available under the completion table, the Bureau believes that for ease of use, including the number of graduates in a calendar year could be helpful to the reader.