

Item 8

(Action Item)

Consideration of adoption of regulations to interpret and make specific Section 69432.7(l)(3)(l)(iv) of the Education Code relating to the Commission appeal process and appeal criteria by eligible institutions for participation in the Cal-Grant Program

SUMMARY:

This item considers the adoption of regulations relating to institutional appeals for participation by qualifying institutions in the Cal Grant program, including the required rulemaking documents and the steps and timeline to complete the regulatory process.

RECOMMENDATION:

Staff recommends that the Commission 1) adopt the proposed regulations and authorize staff to complete the regulatory process, including making any necessary changes and 2) authorize staff to amend the 2017-23 Institutional Participation Agreement to include the substantive requirements of the adopted regulations.

BACKGROUND:

Staff prepared these draft regulations in response to direction provided by the Commission at its July 23, 2020 meeting, where the Commission discussed the requirements of Education Code Section 69432.7(l)(3)(l)(iv), and the development of regulations to implement and make specific this Section.

Education Code Section 69432.7(l)(3)(l)(iv)(I) and (II) requires that the Commission establish an appeal process, and specifies the appeal approval criteria, for qualifying institutions participating in the Cal Grant Program as follows:

Subsection (iv) (I)

Establish an appeal process for an otherwise qualifying institution that fails to satisfy the three-year cohort default rate and graduation rate requirements in subparagraphs (C) and (F), respectively.

Subsection (iv) (II)

The Commission may grant an appeal for an academic year only if the Commission has determined the institution has a cohort rate size of 20 individuals or less and the cohort is not representative of the overall institutional performance.

As stated above, the Commission authorized and directed staff to commence the preparation of draft regulations for its consideration. The proposed regulations were developed to interpret and make specific these provisions of the Education Code by establishing an appeal process for

California Student Aid Commission

qualifying institutions and clarifying the conditions under which the Commission may grant an appeal.

Pursuant to the Administrative Procedures Act, the rulemaking process requires preparation of the draft regulatory text, an Initial Statement of Reasons, a Fiscal Impact Statement, and a Notice of Proposed Regulatory Action, with a minimum 45-day public comment period. Each of the referenced documents is included in the list of attachments.

Staff prepared and filed these documents on November 17, 2020, with the Office of Administrative Law (OAL) for review and publication in the California Regulatory Notice on November 27, 2020. Staff also posted these documents on the Commission's website on November 24, 2020. The 45-day public comment period closed on January 13, 2021, and the Commission shall also consider any public comments provided at today's public hearing on these regulations. To date, staff has not received any public comments.

The Commission must summarize and respond on the record to timely comments that are directed at the proposal or at the procedures followed by the agency during this process. With each comment, the agency must either (1) explain how it has amended the proposal to accommodate the comment, or (2) explain the reasons for making no change to the proposal. The summary and response to comments are part of the rulemaking file will be included in the Final Statement of Reasons submitted to OAL.

After the initial 45-day public comment period, the Commission may decide to change its initial proposal either in response to public comments received or on its own initiative. If changes to the initial regulations are made, the Commission would have to decide whether the changes necessitate an additional public comment period. Depending on whether the change is non-substantial or substantial, an additional comment period of either 15-days or 45-days may be required.

Once the complete rulemaking file is submitted to OAL, OAL has 30 working days to conduct its review. OAL must review the rulemaking record to determine whether it demonstrates that the Commission satisfied the procedural requirements of the APA and complied with the appropriate legal standards. Once OAL has completed its review, and assuming the Commission has met its obligations, OAL files the regulation with the Secretary of State and the regulations will become effective in accordance with the provisions of Government Code Section 11343.4.

Staff is requesting the Commission adopt the proposed regulations and authorize staff to complete the formal rulemaking process required to implement regulations under the Administrative Procedure Act.

RESPONSIBLE PERSON(S):

Julia Blair, General Counsel
Executive Office

Gary Collard, Retired Annuitant
Executive Office

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ATTACHMENT(S):

Text of Proposed Regulations

Initial Statement of Reasons

Fiscal Impact Statement (Form 399)

Notice of Proposed Rulemaking

Task and Timeline Schedule