

Item 7

(Action Item)

Consideration to approve the proposed regulations for the FAFSA and CADAA Completion Requirement Model Acceptable Use Policy and Opt-out Form

SUMMARY:

This item provides a description of the proposed regulations for the Free Application for Federal Student Aid (FAFSA) and California Dream Act Application (CADAA) completion requirement Model Acceptable Use Policy and Opt-out Form, including the proposed regulation text, additional regulatory documents, and a description of the regular rulemaking process.

RECOMMENDATION:

Staff recommends the Commission approve the proposed regulations and authorize staff to complete the regulatory process, including opening a 45-day public comment period, preparing, and submitting all required documents to the Office of Administrative Law (OAL), and making any non-substantive changes to the regulations and supporting documentation as requested by OAL.

BACKGROUND:

As of July 29, 2021, the Commission's rulemaking workgroup, comprised of Program Administration and Services Division (PASD) and the Legal Unit, have been reviewing the Commission's regulations and new programs. With the passing of Assembly Bill 469 (Ch. 560 Stats 2021), the workgroup drafted the attached proposed regulation text for the FAFSA and CADAA completion requirement Model Acceptable Use Policy and Opt-out Form. The proposed regulation text includes a description of the for "acceptable use policy" and "opt out form" and the related model policy and form.

AB 469 expressly authorizes the Commission to adopt regulations to provide guidance on the state law requirements relating to the local educational agency's (LEA) handling of pupil and parent data related to the FAFSA and CADAA completion requirements. Education Code Section 51225.7 (f) specifies that: "[t]he Student Aid Commission shall, on or before July 1, 2022, adopt regulations that include, but are not limited to, model opt-out forms and acceptable use policies for the purpose of providing guidance on the requirements relating to state law in paragraph (2) of subdivision (e). The Student Aid Commission shall post and make available any model opt-out forms and policies established pursuant to this subdivision on its internet website."

California Student Aid Commission

Education Code Section 51225.7 requires the Commission to provide the model acceptable use policy and opt out form as guidance to local educational agencies as they implement and comply with the requirements related to the FAFSA and CADAA completion requirements. It also requires the Commission to post and make available any model opt-out forms and policies established on the Commission website.

Staff has determined that regulations are necessary to establish the FAFSA/CADAA completion requirement model Acceptable Use Policy and Opt-out Form to incorporate and implement the statutory amendments prescribed by AB 469. As noted above, the purpose of the regulations is to provide a model acceptable use policy and opt-out form for use by local educational agencies. Regulations are needed at this time to ensure that the regulatory provisions which provide the model policy and form are available to LEA's.

Commission approval is required for staff to begin the regulatory process. With the Commission's approval, staff will prepare the regulation package which includes the proposed text, Initial Statement of Reasons, the STD 399 Fiscal Impact Statement, and the Notice of Proposed Regulatory Action. These documents will then be made available for a 45-day public review and comment period through the Office of Administrative Law's California Regulatory Notice Register and on the Commission's website.

The rulemaking process requires, at a minimum, a 45-day public comment period. The Commission may also elect to hold a public hearing on a proposed rulemaking action. If the Commission does not schedule a public hearing, any interested person can submit a written request for one to be held. The written request for a hearing must be submitted at least 15 days prior to the close of the written public comment period, and the agency must give notice of and hold a public hearing. 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 shall 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.

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 and are included in the Final Statement of Reasons that is submitted to OAL. 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

California Student Aid Commission

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 become effective.

Staff recommends the Commission adopt the proposed regulations and authorize staff to complete the regulatory process including opening a 45-day public comment period, preparing and submitting all required documents to the Office of Administrative Law, and making any non-substantive changes to the regulations and supporting documentation requested by OAL.

RESPONSIBLE PERSON(S):

Julia Blair, General Counsel
Executive Office

Tae Kang, Deputy Director
Program Administration and Services Division

Alessandra Morrison
Institutional Support Program Manager

ATTACHMENT(S):

Text of Proposed Regulations
Draft Resolution for FAFSA CADAA Completion Regulations
Notice of Proposed Action
Initial Statement of Reasons
OAL Regular Rulemaking Process
CSAC Regular Rulemaking Timeline