

BACKGROUND PAPER FOR The Bureau for Private Postsecondary Education

**Joint Sunset Review Oversight Hearing, March 16, 2021
Senate Committee on Business, Professions, and Economic
Development, Senate Committee on Education,
Assembly Committee on Business and Professions, and
Assembly Committee on Higher Education**

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION

OVERVIEW OF THE REGULATORY LANDSCAPE AND BPPE

Overview of Higher Education Regulatory Landscape

Recognizing that postsecondary education is increasingly necessary to ensure upward mobility and economic stability, and to help students and families afford the cost of college, the federal government annually provides billions of dollars in resources to students and institutions. For example, in FY 2020, Congress appropriated more than \$22 billion to support the Pell Grant program, which provides grants of up to \$6,345 to low-income students; the vast majority of students who receive a Pell Grant have family incomes of \$40,000 or less. To protect these taxpayer investments and ensure educational institutions meet minimum quality standards, the United States operates under a complex regulatory structure that includes the United States Department of Education (USED), accrediting agencies and states. Each arm of the “triad” is responsible for distinct areas of oversight of institutions of higher education:

- USED ensures compliance with administrative and fiscal rules outlined in the Federal Higher Education Act (HEA). These rules include financial responsibility standards, student loan default rate standards (cohort default rate), and other requirements related to compliance with federal student financial aid laws, regulations, and departmental guidance. USED is also responsible for approving accrediting agencies who are able to provide recognition for federal student aid purposes.
- Accrediting agencies are independent organizations responsible for ensuring educational quality. USED does not directly certify the quality of higher education institutions in the United States, but instead “recognizes” accrediting agencies whom have been deemed reliable for the review of institutional standards. Accrediting agencies review college resources, faculty, facilities, student services, and educational programs. In order for an institution to participate in federal financial aid programs under Title IV of the Higher Education Act (Pell Grant, federal student loans, etc.) the institution must be approved by an accrediting agency recognized by USED. There are different types of accrediting agencies: seven regional accreditors provide

accreditation to all public colleges and universities, most large non-profit institutions, and some for-profit colleges and universities; national accreditors, which largely accredit for-profit institutions; and, specialized or programmatic accreditation, which is related to specific degrees or fields of study.

- State oversight agencies are responsible for ensuring consumer protection. In California, the Bureau for Private Postsecondary Education (BPPE, Bureau) represents California's arm of oversight for private colleges and universities. Today, the Bureau reports 1,043 approved institutions enrolling nearly six hundred thousand students. About 56 percent of these institutions report participating in some form of public funding program, which could include federal financial aid, veterans' education programs, workforce training programs and state level student aid. Institutions that do not participate in federal financial aid are not required to follow federal USED or accreditation standards; for those institutions, the Bureau is the only level of approval and oversight.

The Triad is designed to ensure that multiple agencies are monitoring higher education institutions; however, concerns have been raised about the effectiveness of the Triad in ensuring schools are educating students and acting as responsible stewards of taxpayer funds.

In 2010, USED, under the directive of the Obama Administration, moved to establish new *Program Integrity* regulations aimed at ensuring the integrity of institutions participating in federal financial aid programs. The regulations required state-level oversight of institutions, from any state in which the institution serves students. This rule, commonly known as *State Authorization*, requires a state-level approval and complaint process. Program Integrity regulations also established Gainful Employment (GE) standards, a calculation conducted at the program level and based on debt-to-earnings and discretionary income. In January of 2017, USED reported that over 800 programs serving hundreds of thousands of students failed the standard; meaning that their graduates faced annual loan payments of greater than 30 percent of discretionary income and greater than 12 percent of earnings. USED reported that 98 percent of these programs were at for-profit institutions. In 2016, following a number of high-profile closures of for-profit institutions, USED established a process for federal loan borrowers to raise loan defense claims. Commonly known as borrower defense to repayment (BD) these regulations authorize borrowers to file an application for loan forgiveness/cancellation based on the institution defrauding students or violating certain other laws. The BD regulations provided for streamlined application processes for certain students who attended Corinthian Colleges (based largely upon findings of fraud in the case brought forward by the California Attorney General).

In 2019, the Trump Administration announced efforts to delay, amend and rescind many of the rules enacted during the Obama Administration. New GE rules promulgated by USED removed performance standards and instead required institutional reporting on graduate debt and earnings. New rules governing BD narrowed the circumstances when students could qualify for forgiveness and cancellation. Many California students' claims for loan forgiveness or cancellation remain pending with the USED.

History and Authority of the BPPE

Prior to 1990, a division within the California Department of Education loosely carried out regulation of the private postsecondary education industry in California. In response to concerns that the structure failed to provide appropriate oversight of the sector, the Private Postsecondary and Vocational Education Reform Act (Morgan, Chapter 1307, Statutes of 1989) overhauled the regulatory program

and the Maxine Waters School Reform and Student Protection Act (Waters, Chapter 1239, Statutes of 1989) expanded student protections. The framework established by merging the Acts led to duplicative and conflicting statutory provisions. Numerous sunset review reports document California's struggles to provide appropriate oversight of private postsecondary institutions. The former Bureau for Private Postsecondary and Vocational Education (BPPVE) sunset on January 1, 2007.

The Bureau for Private Postsecondary Education (BPPE) and the California Private Postsecondary Educational Act (Act) was established by Assembly Bill 48 (Portantino, Chapter 310, Statutes of 2009) after several failed legislative attempts to remedy the BPPVE structural challenges. AB 48 took effect January 1, 2010, and provided the BPPE responsibility for oversight of private postsecondary educational institutions operating with a physical presence in California. While the Legislature has amended the Act several times since the initial passage of AB 48, it has consistently directed BPPE to make protection of the public the highest priority in performing duties and exercising powers. Today, the Act expresses Legislative intent that BPPE:

- 1) Ensure minimum educational quality standards and opportunities for success for California students attending private postsecondary schools in California;
- 2) Provide meaningful student protections through essential avenues of recourse for students;
- 3) Establish a regulatory structure that provides an appropriate level of oversight;
- 4) Provide a regulatory structure that ensures all stakeholders have a voice and are heard in policymaking by the Bureau;
- 5) Ensure accountability and oversight by the Legislature through program monitoring and periodic reports;
- 6) Prevent harm to students and the deception of the public that results from fraudulent or substandard educational programs and degrees.

BPPE also actively investigates and combats unlicensed activity, administers the Student Tuition Recovery Fund (STRF), and conducts outreach and education activities for students and private postsecondary educational institutions within the state. Within BPPE exists the Office of Student Assistance and Relief (OSAR), established by SB 1192 (Hill, Chapter 593, Statutes of 2016) which exists to advance the rights of students at private postsecondary educational institutions and assist students who have suffered economic loss due to unlawful activities or the closure of an institution.

BPPE Organizational Structure

BPPE operates under the directive of a Bureau Chief, appointed by the Governor and subject to Senate Confirmation. The Bureau Chief reports to the Director of the Department of Consumer Affairs (DCA). As a bureau within DCA, BPPE does not report to a membership board. Instead, statute establishes an Advisory Committee tasked with providing guidance on matters relating to private postsecondary education and the administration of the Act, including annually reviewing the fee schedule, licensing, and enforcement provisions of the statute.

The Advisory Committee consists of 12 members, including:

- Three members with a demonstrated record of advocacy on behalf of consumers, one each appointed by the Director of Consumer Affairs, the Senate Committee on Rules, and the Speaker of the Assembly;
- Two members appointed by the Director of DCA who are current or past students of institutions;

- Three members appointed by the Director of DCA who represent institutions;
- One public member appointed by the Senate Committee on Rules and one public member appointed by the Speaker of the Assembly, and;
- Two nonvoting, ex officio members, the chair of the Assembly policy committee with jurisdiction over legislation relating to the bureau or designee appointed by the Speaker of the Assembly and the chair of the Senate policy committee with jurisdiction over legislation relating to the bureau or designee appointed by the Senate Committee on Rules. The chair may designate a representative for any meeting they are unable to attend.

Advisory Committee members, except the institutional representatives, are subject to conflict of interest provisions, and, generally, may not have financial interests or have advocated on behalf of institutions regulated by BPPE. The Bureau Chief is required to designate staff to support the work of the Committee, the Bureau Chief and the OSAR Chief are required to attend each meeting. The Advisory Committee is required to meet at least quarterly and appoint a member to represent the Committee for purposes of communicating with the Legislature.

All Advisory Committee meetings are subject to the Bagley-Keene Open Meetings Act. The following is a listing of the current members of the Committee:

Name	Appointment Date	Appointing Authority	Type
Katherine Lee-Carey	1/25/2010	DCA Director	Institutional Representative
Margaret Reiter, Vice Chair	3/10/2010	Senate Committee on Rules	Consumer Advocate
Diana Amaya	2/4/2015	Senate Committee on Rules	Public
Leigh Ferrin		Speaker of the Assembly	Consumer Advocate
Senator Steven Glazer	3/13/19	Senate Committee on Rules	Ex Officio
Joseph Holt	1/25/2010	DCA Director	Institutional Representative
Assemblymember Jose Medina	2/4/2015	Speaker of the Assembly	Ex Officio
David Vice	2/26/2013	DCA Director	Institutional Representative
Thomas Wong		Speaker of the Assembly	Public Member
(Vacant)		DCA Director	Past Student
(Vacant)		DCA Director	Past Student
(Vacant)		DCA Director	Consumer Advocate

The Advisory Committee is further discussed in Issue #1.

BPPE is a member of the National Association of State Administrators and Supervisors of Private Schools (NASASPS) and has voting privileges in the organization.

According to BPPE, postage-paid customer satisfaction surveys are sent with every complaint closure letter and provides a website address where online surveys can be completed. Further, BPPE sends e-blasts to stakeholder subscriber lists and electronic communications regarding policy and procedural changes. The Bureau posts updates to Facebook and Twitter. BPPE also attends events such as college fairs as one of the methods to inform students about BPPE resources. BPPE holds workshops to help educate institutions about licensing and compliance with the Act.

BPPE states that it updates its website with all pertinent information. The BPPE website also features results from compliance inspections, formal disciplinary actions and citations and, as of this past fall, the website lists schools denied approval to operate.

Fiscal, Fund and Fee Analysis

Regulatory fees and license fees fund the operations of BPPE. The majority (62.8 percent) of BPPE's revenue comes from annual fees, a 0.45 percent assessment on an institution's annual revenue, up to a maximum of \$60,000 for each campus. At the end of FY 2018/19, BPPE reported that it had a reserve balance of 4.8 months but at the end of FY 2019/20, only 2.3 months in reserve. BPPE was facing insolvency in FY 2021/22 but is scheduled to receive an \$8.0 million Section 14.0 loan from the Bureau of Automotive Repair. BPPE provided a \$3 million loan to the General Fund in FY 2011/12, which was repaid in FY 2016/17. The following is the past, current and projected fund condition of BPPE:

(Dollars in Thousands)	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21
Beginning Balance*	9,517	7,014	8,606	8,064	6,985	3,458
Revenues and Transfers	10,034	^14,991	14,917	15,377	14,853	22,838
Total Revenue	19,551	22,005	23,523	23,441	21,838	26,296
Expenditures***	12,667	13,427	15,320	16,142	18,380	19,878
Loans to General Fund	0	0	0	0	0	0
Accrued Interest, Loans to General Fund	0	0	0	0	0	0
Loans Repaid from General Fund	0	3,000	0	0	0	
Fund Balance	6,884	8,578	8,203	7,299	3,458	6,418
Months in Reserve	6.2	6.7	6.1	4.8	2.3	3.9

According to BPPE, in 2018-19, expenditures break down as follows:

2018-19** Expenditures by Program Component (Dollars in Thousands)		
	Personnel Services	OE&E
Enforcement	5,059	1,568
Examination	0	0
Licensing	3,054	438
Administration*	2,141	409
DCA Pro Rata	0	3,204
Diversion (if applicable)	N/A	N/A
TOTALS	10,254	5,619
* Administration includes STRF/OSAR		
** Fiscal Year 2018-19 budget information reflects estimates available at the time of submission of the Sunset Report, pending year-end financial reports for the BPPE and/or fund.		

BPPE notes that, historically, it has reverted a sizeable amount of its appropriation, which has delayed fee increases. However, with a facility relocation and IT project, BPPE may utilize all expenditure authority in upcoming years.

The Legislature increased Bureau fee levels during the 2016 Sunset Review in SB 1192 (Hill, Chapter 593, Statutes of 2016) as outlined below:

Fee Type	Previous Existing Fee	New Fee (2016)
Branch Fee	\$1,000	\$0
Minimum Annual Institution Fee	\$0	\$2,500
Maximum Annual Institution Fee	\$25,000	\$60,000
Annual Institution Fee	.75 of 1%	.55 of 1%

According to BPPE, the revenue estimated from SB 1192 never fully materialized and, due to increasing oversight and numerous lawsuits filed against schools, the number of schools open and subject to BPPE regulation is declining, which directly impacts revenues. The DCA Budget Office reported in February of this year that BPPE “is in the precarious situation of needing to immediately adjust fees during a time of great uncertainty for an industry adversely impacted by the COVID-19 pandemic and economic downturn. Due to the many issues facing the for-profit higher education industry, complex economic factors that are still unfolding amidst the COVID-19 pandemic, and the unique circumstances surrounding the Bureau’s ability to collect revenue to support its regulatory costs, DCA finds that a higher level of economic analysis and forecasting expertise is needed to fully assess the situation.” As a result, the DCA Budget Office recommend a temporary (two-year) increase of the annual institution fee “to ensure the Bureau can continue to operate through fiscal year 2022-23 and repay its loans” and other recommendations stemming from a fee study BPPE contracted to have prepared.

The BPPE fund and fee levels are further discussed in Issue #2.

Staffing Levels

BPPE’s organizational structure currently includes a Licensing Section; an Administrative Section which handles Student Tuition Recovery Fund (STRF) administration, human resources, budgets and fees, public records and transcripts; a Quality of Education Section; an Enforcement Section comprised of a Compliance Unit, a Complaints Unit, and an Investigations/Discipline Unit. Student outreach is performed by the OSAR.

The Bureau reports it is authorized for 109 positions. According to BPPE, it has experienced staffing challenges since it was reestablished in 2010. After being reestablished, there was no appropriation to hire staff. Staff were loaned or provided to BPPE from various boards and bureaus within DCA. Eventually, BPPE was able to hire new staff in October 2010. Since Fiscal Year 2015/16, BPPE staffing numbers have steadily increased. In Fiscal Year 2015/16, BPPE was granted 17 permanent full-time positions in the Enforcement Units. BPPE also received 10 positions to support the passage of SB 1247. In 2016, DCA disbanded the Complaint Resolution Program, a centralized DCA service that processed a portion of BPPE complaints. When the Complaint Resolution Program was disbanded, BPPE received two staff members to continue to process complaints; those employees continue to work in the Complaint and Investigations Unit.

In 2018, the Enforcement Program was reorganized. BPPE identified the need for a specialized enforcement unit to be headed by a Supervising Special Investigator II and consisting of a Special

Investigator I to manage five Special Investigators. This new specialized enforcement unit was formed in 2019 and is responsible for conducting the more complex investigations.

In 2018, the Office of Student Assistance and Relief (OSAR) was established and is currently comprised of nine positions. The Governor's proposed 2020-21 Budget requested an additional 10 positions to maintain and conduct the statutory duties of the Office of Student Assistance and Relief (OSAR). The Administration argued that there were additional schools that closed unexpectedly since OSAR's establishment, which has created additional unforeseen workload. These positions were rejected at the budget subcommittee level to allow a more thorough conversation regarding BPPE workload and staffing levels during the Sunset Review process. A compromise was achieved allowing approval of the proposal on a two year limited term basis with a phased in hiring approach totaling 10.0 positions (8.0 continued funding for existing positions and 2.0 new positions) in FY 20/2021 and an additional 1.0 new position for a total of 11.0 positions in FY 2021/22. The OSAR is further discussed in Issue #14.

BPPE reports that it has struggled with recruitment and hiring new staff. The civil service hiring process can be lengthy. BPPE is required to submit applications for approval to hire an employee to the DCA Office of Human Resources. BPPE reports that, sometimes, by the time it has received approval from the DCA Office of Human Resources to make an offer of employment the candidate has accepted a position elsewhere. From time to time, after vetting applications and interviewing candidates, the DCA Office of Human Resources informs BPPE that a candidate is ineligible; this might result in the hiring process starting over. BPPE reports these issues present challenges for enforcement and licensing functions. BPPE reports it is working with DCA's Office of Human Resources to improve recruitment and hiring efforts. BPPE also reports a number of efforts to improve staff training and development.

Licensing and Approval Program

BPPE provides oversight for all non-exempt, private postsecondary institutions with a physical presence in California. In FY 2019/20, BPPE reported it has approved 1043 institutions, 383 branch locations, and 533 satellite locations. BPPE also provides registration for in state nonprofit institutions and out-of-state institutions; BPPE reports 67 active registrations. Exemptions to the Act are further discussed in Issue #4. Out-of-state institutions and online learning is further discussed in #7.

For institutions subject to BPPE authority, the Licensing Unit reviews applications for initial approval and renewal of approval to operate, as well as requests for changes in the operations of approved institutions such as a change of ownership, the addition of a location or the addition of an educational program. BPPE is responsible for ensuring that applicants meet minimum operating standards outlined in statute and regulation. Among items required and standards reviewed, applicants are required to provide institution missions and objectives, statements of policies and disclosures regarding financial aid, copies of advertising, description of educational programs offered, statements regarding the institution's ability to maintain sufficient assets and financial resources to provide education to students, a description of facilities used by students and a description of procedures an institution will use to maintain compliance with the Act. Unaccredited institutions that grant degrees are required to obtain accreditation; this issue is further discussed in Issue #6. Minimum operating standards are discussed in Issue #9.

Institutions seeking approval by means of accreditation are only required to provide contact, ownership, and certified accreditation information. Compliance with the Act is not verified at the time

of licensure for schools approved by means of accreditation. Approval by means of accreditation is further discussed in Issue #5.

BPPE reports a goal of having all complete and compliant applications reviewed and approved within 30 days of the application deemed compliant by BPPE. The BPPE reports it is currently meeting this performance measure.

Enforcement Program

BPPE is responsible for protecting consumers and students against fraud, misrepresentation, or other business practices at private postsecondary institutions; establishing and enforcing minimum standards for ethical business practices and the health and safety and fiscal integrity of postsecondary education institutions; and establishing and enforcing minimum standards for instructional quality and institutional stability. Among the oversight and enforcement activities, BPPE:

- Requires institutions to submit an Annual Report, due by September 1 of each year, which includes specific information related to the educational programs offered by the institution in the reporting period. The information and data element portions are submitted by the institution electronically, via a link on the Bureau's website. Supplementary documents are submitted to the Bureau in hard copy (financial documents) and electronic (School Performance Fact Sheet, Catalog) format. BPPE then works with DCA's Office of Information Systems to upload the Annual Report spreadsheet, summary reports, and the supplementary documents to the Bureau's website.
- Receives and acts on complaints, which can be filed online, via telephone and in writing. Complaints are prioritized based on the established priority methodology, guidance is provided in Education Code Section 94941. Complaints of fraudulent business practices, institutional financial instability and imminent student harm are the highest priority. The number of complaints the Bureau receives fluctuates, with numbers increasing during school closures. Complaints are further discussed in Issue #10.
- Conducts compliance inspections, both announced and unannounced inspections of institutions, at least every five years. BPPE is required to adopt policies and practices that ensure student protection is the highest priority and that inspections are conducted based on risk and potential harm to students. When a minor violation is identified during a compliance inspection, the BPPE issues a Notice to Comply. If a non-minor violation is identified, the violation is moved to investigation and enforcement. BPPE reports it has increased compliance inspections by 43% since the 2017/18 fiscal year.
- Conducts investigations takes enforcement action. As a result of an investigation or finding that an institution has committed a violation of statute or regulation, or if an institution has failed to comply with a Notice to Comply, BPPE has the authority to issue an administrative citation. Fine amounts range from \$50 to \$5000, based on the class of violation. Of note, operating without a license is subject to a fine up to \$100,000. The most common violations include unlicensed activity, failure to submit annual fee and/or STRF assessments, failure to maintain proper financial resources, improper school closure, and failure to submit the Annual Report and/or School Performance Fact Sheet. Formal discipline cases are sent to the Office of the Attorney General. Enforcement is further discussed in Issue #11.

Student Tuition Recovery Fund

The Act establishes a Student Tuition Recovery Fund (STRF) to relieve or mitigate losses suffered by students who attend approved institutions, such as when institutions close, fail to pay or reimburse loan proceeds under a federally guaranteed student loan program, or fail to pay judgments against them. The Act leaves the bulk of STRF rules and administration to the regulatory process via regulations promulgated by the Bureau, but states that the balance of the STRF may not be in excess of \$25 million at any time. Students seeking reimbursement from STRF must submit a claim and supporting documents to BPPE at which point staff review the claim application to determine whether adequate supporting materials were provided, among other items, and determine whether to approve or deny the claim. Approved STRF claims result in payment from the STRF to the student. Issues related to STRF and school closures are discussed in Issue #12.

Office of Student Assistance and Relief (OSAR)

Senate Bill 1192 established the OSAR to advance and promote the rights of students at private postsecondary educational institutions and to assist students who have suffered economic loss due to unlawful activities or the closure of the private postsecondary educational institution. OSAR provides assistance to California residents attending private postsecondary educational institutions and provides counsel to students regarding financial aid and their options following a school closure.

Students are assigned to a specific OSAR staff who assist students by performing the following activities:

- Informing students of their general rights and options when impacted by a school closure;
- Directing students to state and federal tuition reimbursement and loan forgiveness programs and assisting them with applying for such relief;
- Providing assistance in obtaining key academic and financial documents;
- Connecting students with available transfer and teach-out opportunities; and,
- Training students on how to best research colleges and in making informed decisions related to their higher education goals.

Since its inception, OSAR has conducted a total 63 closed school workshops. Further, OSAR collaborates with state and federal agencies to ensure that the needs of Californians attending private postsecondary educational institutions are addressed.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The Senate Committee on Business, Professions and Economic Development, Senate Committee on Education, Assembly Committee on Business and Profession and Assembly Committee on Higher Education (Committees) last reviewed the Bureau in 2015-16. At that time, the committees identified 18 issues for discussion. The Bureau's sunset date was extended to January 1, 2021.

BPPE was scheduled for Sunset Review Hearing on March 30, 2020. Due to the COVID-19 crisis, the Bureau, along with all other boards and bureaus scheduled for sunset review in 2020, was provided a one-year sunset extension, to January 1, 2022.

In December 2019, the Bureau submitted its required sunset report to the Committees. In this report, the Bureau described actions it has taken since its prior review to address the recommendations made. The following are some of the more important programmatic and operational changes, enhancements and other important policy decisions or regulatory changes made. Since the Bureau's last review, there have also been a number of actions by the Legislature that amend the Act and effect BPPE's operations, which are also outlined below. For those issues which were not addressed and which may still be of concern to the Committees, they are addressed and more fully further under "Current Sunset Review Issues."

- **Addressing Outdated Technology Systems and BreEZe.** The Committees were concerned that the Bureau uses a woefully outdated data system and there were no solid plans to upgrade Bureau Information Technology (IT) systems. The Bureau reports it is not currently using BreEZe and is working with DCA in planning for a standalone IT system to replace the Schools Automated Information Link. This issue is further discussed in Issue #3.
- **Improving Relationships with Other Regulatory Entities.** The Bureau often shares oversight of institutions with other DCA licensing entities, which results in duplicative and sometimes conflicting oversight of these institutions. The Legislature has consistently encouraged the Bureau to improve relationships and coordination with other licensing agencies. The Bureau reports that it continues to build relationships with other regulatory agencies. Fostering productive relationships has provided the Bureau the opportunity to make these entities aware of the Bureau and has opened the door for the sharing of information. The Bureau reports that the Quality of Education Unit meets on an ongoing basis with representatives from DCA boards and bureaus and other state entities to discuss each entity's responsibility and authority for the review and approval of specific educational programs for which licensure exists that is overseen by that board/bureau.

The Bureau has determined that, while MOUs have existed between some DCA boards/bureaus, the establishment of a MOU for others has not been necessary, as collaboration has occurred between the entities without the need for MOUs. Over the past 12 months, the Quality of Education Unit has met with representatives from the Board of Registered Nursing, Board of Vocational Nursing and Psychiatric Technicians, Board of Barbering and Cosmetology, Department of Industrial Relations, Board of Behavioral Sciences, and the Naturopathic Medicine Committee. BPPE reports these meetings have resulted in a deeper understanding of each other's roles and responsibilities regarding the oversight of specific educational programs and licensure associated with those programs.

The Bureau currently has MOUs with the California Acupuncture Board, the California Board of Barbering and Cosmetology, the California Board of Board of Registered Nursing, the California Board of Vocational Nursing and Psychiatric Technicians, and the Respiratory Care Board of California.

- Improving Outreach to Students.** The Committees expressed concern that the Bureau had focused significant efforts to provide outreach to schools to ensure compliance, but less focus on outreach to students to ensure informed decision making and consumer protection. The Bureau reports a significant increase in student outreach since the creation of the OSAR, including through student workshops, college fairs, and individual case management to support students in receiving economic recovery through STRF and federal loans. The OSAR is discussed in Issue #14.
- Review of Ability to Benefit Examinations.** The Committees expressed concern that the Bureau had not previously conducted the required review of examinations for ability-to-benefit students (students without high school diploma or equivalency). The Bureau reports that it has reviewed the list of examinations prescribed by the United States Department of Education, and it was determined that additional exams are available that are appropriate for ability-to-benefit students with limited English proficiency. The Bureau reviewed and approved the Language Proficiency Assessment Test for Spanish and Vietnamese. A full list of Bureau-approved ability-to-benefit examinations is posted on the Bureau’s website.
- Reducing Compliance Inspection Backlogs.** The Committees expressed concern regarding the significant backlogs of compliance inspections that were causing a similar delay in citation issuance. The Bureau reports that the Compliance Unit staff collaborated with the units within the Bureau to coordinate the review of institution’s compliance in each area concurrently. The revision to the compliance process has reduced the amount of time an inspector would normally spend on the review of each school and has resulted in a higher number of inspections being completed on a monthly basis. This process will allow the Bureau to meet the statutory mandate of completing compliance inspections. Prior to the improvement in the compliance process, any non-minor violations were referred to the investigation unit for further review, thereby adding to a backlog. In 2019, the Compliance Unit hired a dedicated compliance citation analyst and redirected the Enforcement Referrals from the compliance inspection process directly to the citation desk if additional investigation is not necessary. This allows for the issuance of a citation in a timely manner and avoids creating a backlog in the investigation unit.

The Bureau reports the following compliance inspection statistics:

Action	2017	2018	2019	2020 (Jan)
Compliance Inspections	85	155	305	128
Notice to Comply Issued	47	65	49	11
Enforcement Referral	36	56	93	26

- Combating Unlicensed Activity.** The Legislature expressed concern that BPPE was not taking appropriate steps to combat unlicensed activity. In 2014, the Bureau established a team to seek out unlicensed institutions operating in California. The team proactively searches for unlicensed institutions as well as processes the complaints received regarding unlicensed

activity. In 2018, the Bureau dedicated specific staff to process unlicensed activity complaints. Institutions found to be operating without proper approval are cited. The maximum fine for unlicensed activity has increased from \$50,000 to \$100,000 since the last sunset.

The Bureau reports the following enforcement action:

Fiscal Year	# of Citations issued for Unlicensed Activity
2015-2016	11
2016-2017	6
2017-2018	10
2018-2019	56
2019-2020	39
2020-Current	14

- Reducing the Complaint Investigations Backlog and Improving Enforcement Powers.** The Committees expressed concern that, despite staffing increases, BPPE continued to face significant backlogs of investigations. Consumer advocacy groups also expressed concern that BPPE enforcement actions often occurred *after* school closures and/or students harm caused by unlawful institutional activities. Members of the Advisory Committee have noted that it appeared that other agencies, the California Attorney General and California State Approving Agency for Veterans’ Education, for example, take earlier action to prevent harm to students. BPPE reports that it made efforts to improve investigations and enforcement. Specifically, it has enlisted the assistance of DCA’s Division of Investigation (DOI) to help refine the investigative process and to help the Bureau get through the backlog of complaints. DOI provided additional training and resources to Enforcement staff regarding case management and investigation best practices. The Bureau has also contracted with the Office of the Attorney General to provide investigative and report writing training, and the level of evidence required to support the findings of violations.

The Bureau reports the following citation statistics:

	2017	2018	2019	2020
Citations Issued	14	117	334	339
Number of Schools Cited	14	115	308	333

The Bureau reports the following formal discipline statistics:

	2018	2019	2020
Actions	8	15	12
Automatic Suspensions	1	4	13
Emergency Decisions	4	1	1

- School Closures and STRF.** The Committees expressed concern that the amount of funds in the STRF exceeded the statutory cap of \$25M, and yet thousands of students across California were negatively impacted by school closure and fraudulent practices. The Bureau reports that, with the establishment of the OSAR, the Bureau has been able to assist students faced with school closures or the decline in education. OSAR provides individualized assistance to California residents selecting a private college, and counsels California students as they navigate their financial and academic future following the closure or unlawful

activities of the private college they attended. OSAR helps students research colleges and helps students identify, obtain, complete, and submit financial relief documents through on-site or remote outreach. School closures and STRF are further discussed in Issues # 12, 13, and 14.

- **Independent Institutions.** In 2015, SB 81 (Committee on Budget and Fiscal Review, Chapter 22, Statutes of 2015) allowed independent institutions, exempt from Bureau oversight, to enter into contract with the Bureau. This allowance ensured that these institutions could comply with the State Authorization requirements of federal law. The Committees requested an update on the scope of oversight and complaints related to independent institutions. Independent institutions are defined under Education Code (EC) section 66010(b) as nonpublic higher education institutions that grant undergraduate degrees, graduate degrees, or both, and are formed as nonprofit corporations in this state and are accredited by an agency recognized by the United States Department of Education. Independent institutions that enter into contract with the Bureau are required to pay \$1,076.00, annually. To continue receiving services from the Bureau, institutions must renew their contracts by June 30 of each year. The contract provides the Bureau authority to receive, review and act on any complaint concerning the institution.

The Bureau reports that during the first year, the Bureau had 96 contracts with independent institutions. At the end of 2018 there were 113 contracts. Complaints from independent institutions are assigned to an analyst designated to process such complaints. The analyst works with the complainant and the institution to find resolution. The complaint may also be referred to the accreditor or another entity that has jurisdiction regarding the allegations of the complaint. In 2018, the Bureau received 25 complaints, most were related to contracts, discrimination, student loans, and unprofessional conduct. Eight of those complaints were referred to another entity and 4 complaints were ultimately resolved.

- **Major Legislation Affecting Bureau Operations.** *A number of measures were signed into law since the prior Sunset Review evaluation that impact the way BPPE operates, collects information, and regulates schools. BPPE should provide an update on the implementation of legislation below, making note of any further statutory changes necessary to achieve these measures' intent.*

AB 70 (Berman), Chapter 153, Statutes of 2020, prohibits the Bureau from approving an exemption or handling complaints for a nonprofit institution that the AG determines does not meet specified criteria of a nonprofit corporation. *BPPE should inform the Committees about efforts being undertaken with the Office of the Attorney General to implement this law.*

AB 1340 (Chiu), Chapter 519, Statutes of 2019, requires the Bureau to collect loan data for all graduates and reconcile the information with wage data from Employment Development Department (EDD). The Bureau would be required to post a Labor Market report of institutions and programs, on the Bureau website. At minimum, the report would include loan and income statistics at two and five years from graduation. The Bureau would also share data with EDD for the federal Workforce Innovation and Opportunity Act compliance. *Current requirements for institutions to include information regarding the salaries of graduates can prove difficult to collect and verify. During the prior sunset review oversight of BPPE, one school advised that only 29 percent of graduates responded to surveys regarding employment and salary. BPPE should update the Committees on the necessary*

updates to existing disclosures that will come when AB 1340 is fully implemented, including whether it will remain necessary for institutions to provide data that is collected and calculated only to comply with the Act like graduation and job placement information that relies on unsubstantiated student survey data, among other sources.

AB 1344 (Bauer-Kahan), Chapter 520, Statutes of 2019, requires that out-of-state institutions registering with the Bureau, either at the time of registration, or within 30 days if currently registered, to notify the Bureau if specific actions are taken against the institution. Currently registered institutions will be required to submit a written statement as to why they should be allowed to continue enrolling California students. This bill allows the Bureau to take action against the institution based on consultation with the Attorney General. *BPPE should advise the Committees whether any institutions have faced enforcement as a result of AB 1344 and what steps the Bureau is taking to ensure it remains aware and up to date about actions taken against an institution that BPPE needs to know about.*

AB 1346 (Medina), Chapter 521, Statutes of 2019, expands the definition of “economic loss” for the purposes of recovery through the STRF to include all amounts paid to the institution and amounts paid in connection with attending the institution. The bill also expands eligibility for students affected by the closure of Corinthian.

SB 1348 (Pan), Chapter 901, Statutes of 2018, requires California Community Colleges and Private Postsecondary institutions overseen by the BPPE that have educational programs that offer certificates or degrees related to allied health professionals to include specific information regarding clinical training with the Annual Report.

SB 1192 (Hill), Chapter 593, Statutes of 2016, extended the sunset for the Bureau and made numerous changes, including:

- Creation of an out-of-state registration system to allow California students in distance education to be eligible for STRF.
- Removal of exemptions for the “good school exemption” and any schools participating in federal Title 38 veterans’ financial aid.
- Reduction of the period for verification of exemption to two years from an indefinite verification.
- Elimination of two positions from the Bureau’s advisory committee.
- Granting to the Bureau the discretionary authority to extend the timelines for the accreditation requirement for degree programs.
- Provision of authority for the Bureau to create an “inactive status.”
- Addition of requirements for disclosures regarding both voluntary and required licensure.
- Changes to STRF eligibility and requirements.
- Changes to the Bureau’s annual fee rate and structure.
- Modification of law to allow evidence from an inspection to be used as part of an enforcement action.
- Creation of a reporting requirement from schools under investigation by “oversight authorities.”
- Increase of the fine for operating without approval from \$50,000 to \$100,000. • Creation of OSAR.
- Extending of the Bureau’s sunset date to January 1, 2021.

CURRENT SUNSET REVIEW ISSUES

The following includes unresolved issues pertaining to the BPPE, areas of concern that should be considered, and background information for each issue. There are also recommendations Committee staff have made regarding particular issues or problem areas BPPE needs to address. BPPE and other interested parties have received this Background Paper and BPPE will respond to the issues presented and the recommendations of staff.

BPPE OPERATIONAL ISSUES

ISSUE #1: (ADVISORY COMMITTEE.) BPPE’s Advisory Committee may be underutilized in terms of the ability for this body to provide important guidance and direction to the program. Are changes necessary to improve the effectiveness of the Advisory Committee?

Background: As previously discussed, the Advisory Committee is tasked with providing information and feedback to the Bureau. The Bureau is similarly tasked with providing updates and seeking advice and counsel from the Advisory Committee. The Advisory Committee is required to meet quarterly. Advisory Committee members have no defined term limits or provisions governing the election or terms of Committee leadership. At recent Advisory Committee meetings, some members have expressed a lack of clarity regarding their role and purpose. The Bureau reports that in the past four years, five meetings were cancelled due to a lack of a quorum.

Staff Recommendation: *The Committees may wish to consider if the Advisory Committee should have a more formal role, and whether terms and leadership should be defined in statute. The Bureau should provide an update on whether and how the Advisory Committee has provided meaningful input to Bureau decisions or operations.*

ISSUE #2: (OPERATIONAL COSTS, FEES, AND FUNDING.) The Bureau is supported by fees assessed on the institutions it oversees which are deposited into the Private Postsecondary Education Administration Fund (fund). Currently, the Bureau’s fund has a significant structural imbalance – annual expenditures exceed annual revenue intake, which draws down the balance of the fund. The fund’s balance has been declining over the last several years and it is estimated to become insolvent in this fiscal year absent external assistance such as a loan from another special fund within the DCA or from the General Fund.

Background: As previously outlined, BPPE has historically reverted a sizeable amount of its appropriation. A recent facility relocation and ongoing IT project means BPPE believes it will utilize all expenditure authority in upcoming years. DCA and BPPE report that the Bureau needs an immediate fee increase.

The Bureau’s main source of revenue is an annual institution fee based on a percentage of annual revenue reported by licensed institutions. DCA states that “this revenue source is unconventional when compared to other DCA programs, due to it being based on an institution’s profitability, which can lead to unpredictable revenue collections year to year based on a multitude of economic factors, including school closures.” However, the entire existence of the Bureau as a regulatory program with broad responsibility for oversight of schools and training programs is very different from other programs within DCA that are funded based on current and future projections of licensee populations.

The Bureau was estimated to collect \$16.7 million in FY 2019/20 and annually thereafter following the fee increases approved in 2016. The Bureau fell short of this estimate by \$1.9 million, only collecting \$14.8 million. According to DCA, “the following instances are examples that impact the Bureau’s revenue:

- High Profile School Closures (Brightwood College, San Francisco Art Institute, etc.)
- A change in an institution’s business structure – Online Distance Learning (fewer physical school locations in California)
- Evolving Industry – the data used to forecast the Bureau’s Annual Institution Fee is based on prior year data pulled from the Bureau’s Annual Reports, data that is submitted annually to the Bureau by the schools. DCA acknowledges that schools are opting to provide more distance learning and a larger online presence. This, coupled with school closures every year, makes it very challenging to provide accurate estimates.”

BPPE’s expenditures have significantly increased since FY 2011/12 when the Bureau became fully operational after a sunset and elimination of the prior program. Since then, BPPE’s authorized positions have increased by 71% (63.0 positions → 108.0 positions) and authorized expenditures have increased by 155% (\$7.6 million → \$19.4 million). DCA explains the following are some of the main contributing factors to increased expenditures:

- Annual budget adjustments to salaries and benefits (employee compensation and retirement rate increases) - \$3.2 million increase (27% of the overall increase)
- Budget Change Proposals – added 47.0 positions and \$5.1 million in budget authority (43% of the overall increase) to respond to legislative mandates. Specifically, main programmatic changes were:
 - 2017-18 and 2020-21 - To establish OSAR to assist students displaced by school closures – 10.0 positions (6.0 positions were extended to two-year limited-term) and \$1.300 million ongoing
 - 2015-16 - Additional positions to address the response to the State Auditor’s recommendation to contract with a third-party to evaluate enforcement and licensing backlogs – 27.0 positions (17.0 positions converted to permanent from limited-term) and \$2.748 million ongoing
 - 2015-16 – SB 1247 implementation, including additional resources to implement provisions related to Title 38 schools, establishment of an Advisory Committee, and additional schools due to changes to accreditation standards – 10.0 positions and \$1.077 million ongoing
- Business Modernization (New IT System) - \$2.3 million (20% of the overall increase)
- Pro Rata charged by DCA for centralized services - \$1.1 million increase (10% of the overall increase). According to DCA, “a good portion of Department Pro Rata costs are distributed to

all DCA programs using an authorized position count ratio. So as the Bureau’s staffing has increased since 2011-12, so has their departmental pro rata costs.”

DCA states that a sizable portion of BPPE expenditures are unfunded due to the workload related to addressing school closures.

As a first step to address the structural fund imbalance, in December 2019 BPPE contracted with Capitol Accounting Partners, LLC to complete a cost analysis of BPPE fees to determine how much revenue is needed to support ongoing regulatory costs. The fee study identified that BPPE will need to collect \$25.902 million annually in order to support its annual expenditures based on BPPE’s 2020/21 enacted budget, to pay back its special fund loan, and to rebuild its fund reserves over the next five years. DCA notes that the fee study used institution revenue information from calendar years 2018 and 2019, which were prior to the current COVID-19 pandemic. As such, the study does not take into account any impact of the current economic crisis and how it has and will continue to impact the private postsecondary higher education industry. BPPE notes that the pandemic is already changing the way institutions are conducting business, and the industry is evolving to a greater online presence through increased distance learning offerings. This could have an impact on future BPPE revenue, especially if more California students choose distance learning from out-of-state private postsecondary educational institutions given that BPPE currently only requires out-of-state institutions to register and pay a \$1,500 registration fee to the Bureau.

While the recommended fee levels would appear to address the Bureau’s pending fund insolvency, based on previous revenue estimate shortfalls and potential future school closures, DCA is not confident that the recommended increases would sustain the Bureau’s costs in the long term. If the Bureau’s ongoing fee structure cannot continue to sustain its regulatory costs, the Bureau will need to re-evaluate its fee structure and look to develop a more sustainable model to avoid these significant increases to license fees paid by institutions.

DCA notes that “the Bureau’s current fee model appears not to be sustainable. A deeper look at industry trends and economic conditions is needed to determine if the Bureau’s current fee structure is reasonable, or whether alternative fee structures would create a more sustainable revenue stream that can better scale with the Bureau’s costs to provide regulatory oversight and weather times of economic downturn. Additionally, a comprehensive review of the Bureau’s existing workload and regulatory requirements would be warranted to determine if the Bureau is structured appropriately for the regulatory population it oversees, and whether any efficiencies in business processes can be achieved to lower the Bureau’s overall expenses.

BPPE is proposing the following adjustments to its fee schedule:

Fee Type	Current Fee	New Fee	Percentage Increase
Application for approval to operate a nonaccredited institution, (<i>degree</i>)	\$ 5,000	\$ 14,085	182%
Application for approval to operate a nonaccredited institution, (<i>non-degree</i>) *New fee*	\$ -	\$ 12,566	N/A
Substantive change to an initial application *New fee*	\$ -	\$ 3,791	N/A
Application for approval to operate a new branch of a nonaccredited institution.	\$ 3,000	\$ 3,000	0%
Application for approval to operate by means of accreditation.	\$ 750	\$ 10,564	1309%
Fee for an application for verification of exempt status	\$ 250	\$ 1,407	463%
Fee for a substantive change to an institution's approval to operate (change in objective) / per program	\$ 500	\$ 4,083	717%
Fee for a substantive change to an institution's approval to operate (ownership).	\$ 500	\$ 888	78%
Fee for a substantive change to an institution's approval to operate (location).	\$ 500	\$ 500	0%
Fee for a substantive change to an institution's approval to operate (name).	\$ 500	\$ 500	0%
Application for approval to operate a nonaccredited institution, (<i>degree or non-degree</i>) *new fee*	\$ -	\$ 3,834	N/A
Fee for a substantive change to an institution's approval to operate (instructional delivery).	\$ 500	\$ 3,055	511%
Fee for a substantive change to an institution approved by means of accreditation, (change in objective).	\$ 250	\$ 1,214	386%
Fee for a substantive change to an institution approved by means of accreditation, (change in ownership).	\$ 250	\$ 1,121	348%
Fee for a substantive change to an institution approved by means of accreditation, (Change in location)	\$ 250	\$ 1,121	348%
Fee for a substantive change to an institution approved by means of accreditation, (Change in name)	\$ 250	\$ 1,121	348%
Fee for a substantive change to an institution approved by means of accreditation, (Instructional delivery)	\$ 250	\$ 1,121	348%
Fee for a substantive change to an institution approved by means of accreditation, (Additional branch)	\$ 250	\$ 1,121	348%
Out-of-State registration	\$ 1,500	\$ 1,500	0%
Processing for the review of a nonsubstantive change notification *new fee*	\$ -	\$ 250	N/A
Renewal fee for the main campus of a nonaccredited institution - degree.	\$ 3,500	\$ 8,717	149%
Renewal fee for the main campus of a nonaccredited institution - non-degree.	\$ 3,500	\$ 3,500	0%
Renewal fee for a branch of a nonaccredited institution (per branch).	\$ 3,000	\$ -	N/A
Renewal fee for an institution approved by means of accreditation	\$ 500	\$ 794	59%
Annual Institution Fee - Minimum Fee	\$ 2,500	\$ 5,000	100%
Annual Institution Fee - Maximum Fee	\$ 60,000	\$ 115,000	92%
Annual Institution Fee - Percentage Fee	0.55%	0.794%	44%
Student Transcripts *new fee*	\$ -	\$ 25	N/A

Staff Recommendation: *In evaluating any proposed fee levels, the Committees should consider the scope of Bureau activities and staffing levels to determine if these activities and priorities align to Legislative intent. BPPE and DCA should inform the Committees about efficiencies that have been undertaken to ensure BPPE is doing necessary work, including reorganization, staffing adjustments, and efforts to achieve cost savings.*

ISSUE #3: (IT/BUSINESS MODERNIZATION/BREEZE.) BPPE has historically relied on woefully outdated systems to track data, timelines, licensees, and important information. What is the status of an updated IT system?

Background: The Bureau is not currently utilizing BreEZe. The Bureau was originally in Release 3 of the BreEZe Project, which has been canceled. The Bureau is in the middle of executing its business modernization initiative. The Bureau initially met with DCA’s Office of Information Systems in October 2016 to discuss the process and requirements for replacing the Bureau’s Schools Automated Information Link, which is an independent standalone IT system that is not used by any other board or bureau within DCA. The DCA Director subsequently authorized the Bureau to commit resources to the project. The Bureau then partnered with DCA’s SOLID Organizational Change Management Unit to begin mapping each of the Bureau’s business processes in “As-Is” state. The business process mapping began in September 2017 and concluded in February 2018 with the documentation of 74 individual business process maps representing the Bureau’s business processes across all functional areas. SOLID and Bureau staff then began a second phase of business process mapping in February 2018 to produce “Could-Be” business process maps with consideration of potential gains in efficiencies and effectiveness if the Bureau possessed a robust IT support system. A total of 53 “Could-Be” business process maps were completed by March 2018.

The California Department of Technology mandates a four-stage Project Approval Lifecycle process for all IT projects to ensure that proposed projects are based on well-defined programmatic needs, consider feasible alternatives to address the identified needs, identify a sound technical solution, implement project management best practice, and comply with state policies and procedures. Each stage requires California Department of Technology approval prior to moving to the next stage.

The Stage 1 Business Analysis evaluates completeness, the sufficiency of the business case and whether the concept aligns with the department and agency priorities. The Bureau completed a Stage 1 Business Analysis document and exhibits, which was accepted and approved by the California Department of Technology on May 10, 2018.

The Stage 2 Alternatives Analysis ensures sufficiency of planning, organizational readiness and good documentation resulting in sufficient market research, alternative analysis, and justification for the selected alternative. The Office of Information Systems and the Bureau completed a State 2 Alternatives Analysis document and exhibits, which were submitted to the California Department of Technology on March 8, 2019.

The Stage 3 Solution Development provides the basis to acquire a solution that best meets business objectives and yields the highest probability of success. The California Department of Technology held a Stage 3 Kickoff Meeting on April 24, 2019 to discuss Stage 3 deliverables and activities. The Bureau is currently working with the Office of Information Systems and other stakeholders on Stage 3 activities, including the drafting of Statements-of-Work and vendor solicitations.

Staff Recommendation: *The Bureau should provide an update on the status of its technology modernization business plan and describe how technology modernization will help the Bureau better serve students and oversee institutions.*

LICENSURE AND SCHOOL APPROVAL

ISSUE #4: (EXEMPTIONS.) Long the source of questions, challenges, concerns, and attempts to respond to carve outs, exemptions in the Act remain a significant source of interest as the Legislature evaluate BPPE's work and the landscape of private postsecondary institutions that serve students in the state. Do the current exemptions make sense? Are changes necessary? Are students well served by schools that are not regulated?

Background: The Act contains a number of exemptions for a variety of types of institutions. The Legislature is continuously asked to expand exemptions through legislative proposals that aim to carve out one specific school or one type of educational entity. For example, various stakeholders have recently requested changes to the exemptions, including:

- Apply exemptions to specific programs, not just institutions as is currently provided in the Act. Stakeholders argue that many institutions offer low-cost, short term and/or recreational programs that should not be required to meet all provisions of the Act (School Performance Fact Sheet, student disclosures, etc).
- Increase the cost threshold for the exemption for low-cost institutions from \$2500 to \$5000.
- Allow previously exempt institutions that received BPPE approval under 94874.8(2) to regain their exemption if desired.
- Exempt psychoanalytical institutions that do not offer a degree.

In addition, BPPE has requested several changes to existing exemptions:

- Religious Institutions: EC section 94874(e)(1)(A) does not specify how much of the instruction must be limited to the principles of the religious organization. This allows a religious organization that qualifies for exemption under EC section 94874(e) to offer instruction covering any and all areas of knowledge with very limited reference to the principles of the religious organization. Therefore, students may receive instruction in any subject with barely a mention of the principles of that religious organization. In order to ensure these institutions are actually providing instruction in the principles of the religious organization, BPPE proposes the following statutory change:

94874(e)(1)(A): “The All instruction provided is limited to either of the following:

(i) The principles of that religious organization. More than 50% of each course must be focused on the religious principles of that religious organization, or

(ii) The courses offered pursuant to Section 2789 of the Business and Professions Code.

- Trade, Business or Fraternal Organizations: Current law does not specify whether an institution can sponsor its own educational programs. Many schools submit a verification of exemption application under EC section 94874(b)(1) that offer educational programs to their own members. This interpretation of law would mean that any institution could require its students to pay a nominal membership fee and the school would be exempt from Bureau oversight. The Bureau recommends a statutory change to the law that would require institutions to be sponsored by a separate and distinct entity in order to qualify under this exemption.

Staff Recommendation: *The Act should be amended according to the changes noted above regarding religious institutions and sponsored educational programs. The Committees should request the BPPE provide feedback on the other exemptions requested by stakeholders.*

ISSUE #5: (APPROVAL BY MEANS OF ACCREDITATION.) Accredited institutions are almost automatically approved and not subject to the same review and approval process required for other institutions that operate in this state. Accreditation provides a baseline measure of institutional quality, but with federal accreditation rules and standards weakened, and in light of significant scrutiny of accrediting agencies, questions remain as to whether accreditation alone is enough.

Background: As previously outlined, BPPE grants institutions one of two types of approvals to operate: an approval to operate (informally regarded as a “full” approval), and an approval to operate by means of accreditation. The type of approval for which an institution applies is dependent upon whether the institution is accredited and, if accredited, is based on an accredited institution’s application option. The intent of approval by means of accreditation is interpreted to mean that the Bureau will rely on the institution’s accreditor to ensure the institution has the capacity to satisfy the minimum operating standards and to ensure the institution is offering quality educational programs.

BPPE has found that institutions approved by means of accreditation often have compliance issues related to the catalog, enrollment agreement, website requirements, financial responsibility, and educational quality, despite the oversight of the accrediting agencies in tandem with that of the Bureau. Additionally, serious issues have surfaced over the last few years challenging the levels and quality of oversight by at least one accreditor. In December 2016, USED withdrew recognition from the Accrediting Council for Independent Colleges and Schools. This resulted in a situation in which some degree-granting institutions approved to operate by means of accreditation suddenly lost their basis for approval to operate in California and the students enrolled in these institutions were harmed, as the institution was no longer accredited. USED has proposed regulations (Federal Register Vol. 84, No. 113 / Wednesday, June 12, 2019 / Proposed Rules) that, among other things, would revise the requirements for accrediting agencies in their oversight of member institutions and programs to be less prescriptive and provide greater autonomy and flexibility.

Lastly, a review of precipitous institutional closures over the last several years reveals that of the five largest closures in terms of number of students impacted, four had been approved by means of accreditation.

BPPE proposes to amend the statute to remove the provision for institutions to seek approval by means of their accreditation and instead allow only a single application for approval for all institutions regardless of accreditation status, implemented on a phase-out schedule whereby institutions—for which their term of approval by means of accreditation is expiring—would be required to submit an application for approval (full approval) in order to remain approved to operate. This would not impact the institutions’ accredited status but would provide a clear separation between the Bureau’s approval to operate and the institutions’ accreditation. Concerns exist about whether accreditation alone should merit approval to operate

Staff Recommendation: *The Bureau should report to the Committees as to how this proposal would impact workload and staffing requirements. The Committees may wish to consider whether all aspects of the full application should be required, or if there are specific triggers where further*

BPPE review is warranted, for example when an institution is being prosecuted in another agency or state, when an institution's financials do not meet state standards, or when an institution has received numerous student complaints. A model for this approach exists under current statute that allows the Bureau additional oversight for out-of-state online institutions.

ISSUE #6: (ACCREDITATION OF DEGREE GRANTING INSTITUTIONS.) What is the status of requirements that institutions offering degrees be accredited?

Background: SB 1247 (Lieu, Chapter 840, Statutes of 2040) required California private postsecondary educational institutions offering degree programs to be accredited by an accrediting agency recognized by USED. Education Code sections 94885.1 and 94885.5 were added to address this requirement. EC section 94885.1 applies to degree-granting institutions that were approved to operate on or before January 1, 2015. In 2014, the Bureau identified 141 institutions in this category, of which 34 are currently pursuing accreditation by July 1, 2020. EC section 94885.5 applies to all institutions that have never been accredited but were/are seeking to offer one or more degree programs, after January 1, 2015. Under the provisions of this section, an institution must submit an accreditation plan with its application for approval to operate and must achieve pre-accreditation or accreditation candidacy within two years of its provisional approval, and full accreditation within five years of its provisional approval. The Bureau has identified a number of challenges related to the implementation of these provisions and is requesting several changes to statute, including:

- **Timelines.** Some accreditors require that institutions have either enrolled students over a specified period of time or have graduated students from at least one of its programs. For example, the Distance Education Accrediting Commission requires, at the time of its initial application for accreditation, that an institution has been enrolling students in the current programs for two consecutive years and under the present ownership. The Accrediting Commission of Career Schools and Colleges requires, at the time of initial application for accreditation, that an institution must have graduated at least one class of students from the longest program(s) offered during the two-year period preceding its application for accreditation. If the program is a bachelor's-level degree, this would be four years. In both of the examples, it is not possible for new institutions given a provisional approval to operate by the Bureau, to achieve pre-accreditation or accreditation candidacy within the two years as required by EC section 94885.5, as they are restricted from applying for accreditation until they meet the accreditor's conditions for student enrollment/graduation.

SB 1192 added a provision to EC sections 94885.1 and 94885.5 to allow the Bureau to approve an extension of time, not to exceed two years, to meet the requirements of EC sections 94885.1 or 94885.5. However, the institution's request must demonstrate active steps the institution is taking to comply with the section and must include documentation from an accrediting agency, recognized by the USED, demonstrating the institution's likely ability to meet the requirements of EC section 94885.5. The Bureau notes that accrediting agencies will not provide this documentation for institutions that have not yet applied, regardless of whether or not they are eligible based on the accreditor's requirements for enrollment or graduates.

The Bureau requests the two-year timeline for achieving pre-accreditation or accreditation candidacy as part of the provisions of EC section 94885.5 account for differences in accreditation eligibility requirements.

- **Loss of Accreditation.** Current law is silent on institutions achieving accreditation as required by EC sections 94885.1 and 94885.5 and subsequently losing such accreditation. The Bureau recommends amending the statute to address approved institutions offering degree programs that surrender their accreditation or for which accreditation is removed or revoked by the accreditor. The Bureau notes that institutions in those situations should surrender the degree programs and provide the Bureau with a teach-out plan or degree closure plan to protect students.
- **Change of Ownership.** The Bureau reports that some institutions issued a provisional approval to operate up to two degree programs while pursuing accreditation pursuant to EC section 94885.5 are selling the institutions shortly after receiving a provisional approval. This presents a problem since accrediting agencies prohibit institutions from making certain substantive changes, such as a change in ownership or control, institutions that change ownership while provisionally-approved by the Bureau and seeking accreditation jeopardize their ability to meet the pre-accreditation and accreditation deadlines imposed by EC section 94885.5 in that the accreditation process is halted when an institution changes ownership. This results in direct student harm, according to BPPE. The Bureau recommends amending the statute to restrict institutions operating under a provisional approval pursuant to EC section 94885.5 from changing ownership or control during the term of provisional approval, or until the institution achieves full accreditation.
- **Non-degree Programs.** The Bureau reports that the statute is unclear on what happens to non-degree programs offered by a non-accredited institution granted a provisional approval to operate, that has its provisional approval automatically suspended for failing to comply with the requirements of EC section 94885.5 pertaining to the pursuit of accreditation. It is unclear whether a provisional approval to operate means a provisional approval to operate degree programs and excludes non-degree programs. The Bureau recommends amending the statute to address the intent regarding non-degree programs offered by provisionally-approved institutions that are suspended for failure to meet accreditation milestones. Alternatively, the Committees may consider amending the statute to make clear whether the intent of the statute is to restrict institutions applying for provisional approval to only offering degree programs.

Staff Recommendation: *The Committees may wish to consider amending the Act and approving the Bureau’s recommendations regarding changes to the requirements that degree granting institutions be accredited.*

ISSUE #7: (DISTANCE EDUCATION AND OUT-OF-STATE PUBLIC AND NONPROFIT INSTITUTIONS.) How can BPPE ensure that California students are protected when attending institutions that may not meet the requirements for a physical presence that would trigger Bureau oversight?

Background: The Bureau has traditionally regulated only institutions with a “physical presence” in California. As a growing number of public and private institutions organized or incorporated outside California serve California students through online and hybrid instruction, the need for Bureau oversight has increased. The Legislature has expanded some areas of oversight, providing a registration process for out-of-state for-profit institutions and requiring their participation in the STRF. Public and non-profit institutions, however, remain outside of BPPE’s purview – and increasingly, public institutions are adopting methods of program delivery modeled after for-profit institutions. Still,

it has been challenging for BPPE to define a line of when an institution has a physical presence, and when it does not. EC section 94858 defines a “Private Postsecondary Educational Institution” as a private entity with a physical presence in this state that offers postsecondary education to the public for an institutional charge. The statute, however, is silent on what constitutes a *physical presence*.

The Bureau has struggled with understanding and applying the intent of the legislation in determining whether an institution has a physical presence, under certain circumstances, since the statute does not define physical presence. In some instances, private postsecondary institutions operating in other states have offered externships or similar learning opportunities in California, sometimes partnering with other California public or private postsecondary institutions. In other instances, students have enrolled at institutions in other states but attend portions of their educational programs/courses in California, at facilities that may be owned or rented by the out-of-state institution, or the out-of-state institution has an agreement with another non-institution entity to rent, lease, or use the facilities in California. In the examples above, the faculty providing instruction may belong to the out-of-state institution, may travel from the out-of-state institution’s home state, or the institution may contract with local faculty residing in California to deliver the instruction.

Action taken by the United States Department of Education (USDE) in 2010 aimed at improving the integrity of programs authorized under Title IV of the Higher Education Act requires, among other things, that to remain eligible for Title IV, postsecondary education institutions must be authorized to operate in the state they are located and must ensure access to a complaint process that will permit student consumers to address alleged violations of state consumer protection laws. In response to concerns over the complexity and cost of navigating differing requirements in multiple states, a group of institutions, states, and policy organizations developed what most now refer to as the State Authorization Reciprocity Agreement (SARA). SARA provides that accredited, degree-granting institutions approved by an oversight body in one participating state will be deemed automatically to have met approval requirements in other participating states.

General concerns remain about online programs that are offered by some institutions perceived as providing fraud and debt rather than knowledge and skills. In some states, institutions offering distance education programs to California students have entered into settlements with those states after being accused of undertaking misleading online recruiting practices, including deceiving prospective students by leading them to believe that online education degrees would allow them to become licensed professionals. A number of institutions which have been the focus of complaints by state and federal agencies continue to have robust distance education programs and are actively enrolling students.

Institutions that participate in SARA are approved for participation by their home state, and states that join SARA must accept that approval – regardless of the effectiveness of the home state’s oversight. Once a state enters SARA, it does not retain authority to enforce its applicable laws – for California, this would mean no longer being able to impose some of the important student protections contained in the Act. SARA would still allow the AG to take action based on general laws (fraud, deception, etc) but provisions in the Act would not be applicable. The Legislature would cede its authority to determine which state laws schools should abide by and would not be able to take enforcement action. It is unclear if statutes in California like those allowing CalVet to set standards and limits on veteran enrollment and Title 38 use at a particular institution would be considered “general purpose” by SARA or would be rendered ineligible to apply to SARA member institutions.

Once a state is approved to join SARA, institutions that are operating under the compact are able to enroll students in their distance education programs. California regulates non-profit and for-profit distance education programs (by requiring for-profits to pay into STRF) differently but would no longer be able to if the state entered SARA.

In 2019, USED announced new federal regulations regarding financial aid, requiring schools to document a complaint process for distance education students. An institution must disclose at least one point of contact for filing student complaints—the location of the student or the home State of the institution or a third party identified by a State or State reciprocity agreement. In response to USED’s announcement that Californians enrolled in online programs at out-of-state colleges and universities would be ineligible to use federal financial aid because California did not have a complaint process in place, DCA issued a press release in July 2019 announcing that they developed a complaint process for Californians enrolled in online programs at public or private nonprofit colleges and universities that are physically located in other states. DCA’s release noted that BPPE would “assist DCA in handling complaints.” DCA advised that it would evaluate complaints, identify the appropriate accrediting agency or governmental entity to handle the complaint, and request a response from the entity regarding the final disposition of the complaint. If no response is received, DCA will follow up with the agency to which the complaint was referred to determine the resolution and, if necessary, determine whether additional referrals are warranted. It remains unclear whether BPPE can absorb this additional workload or if BPPE is undertaking this work. Particularly since nonprofit institutions in California are required to pay BPPE a fee to handle complaints, it would be helpful to understand what role the Bureau plays and how this work is funded.

Staff Recommendation: *The Committees should consider directing the Bureau to establish a definition of “physical presence” through regulation. The Bureau should provide an update on its work processing complaints for public and nonprofit institutions, including the workload involved and whether fees are necessary.*

ISSUE #8: (INCOME SHARE AGREEMENTS.) If implemented responsibly, this education funding mechanism could be a useful option for some students but may warrant greater oversight to protect consumers from bad actors or from unintentionally overly committing their repayment obligation. What is the Bureau’s status on income share agreements (ISAs) and are BPPE-approved institutions authorized to utilize this model?

Background: An Income Share Agreement (ISA) is a contract in which a person agrees to pay a fixed percentage of their income for a defined length of time, in exchange for up-front funding or services. (The general concept of an ISA was first developed by economist Milton Freedman in the 1950s.) In higher education, this contract is typically between a student and an institution. An ISA differs from a loan in how the amount owed is calculated. In a loan, the individual makes payments based on an interest rate until their principal balance is reduced to zero. With an ISA, the individual pays a percentage of their income for a set period of time, regardless of the total amount paid. There is no outstanding “balance.”

ISAs thus offer an alternative to debt. Debt creates substantial risks to students if they cannot afford their payments after college, whereas ISA payments adjust according to levels of income. In addition, ISAs typically have a minimum income threshold and a maximum payment cap, so students will not pay if they do not meet a minimum income level, while those earning a substantial income will not pay more than a certain maximum amount.

An ISA differs from a traditional loan in that students aren't accruing interest on the total amount funded through the ISA. Most individuals entering into an ISA, however, will pay more than the principal amount borrowed. The amount required to pay (the Income Share percentage multiplied by earned income) only grows due to the growth in earned income. The income share percentage level does not change over the course of the ISA repayment.

While ISAs have been provided by investors to individuals, only a few colleges have implemented an ISA program. The largest and most well-known program is Purdue University's "Back a Boiler," which to date has been funded by the university's foundation. (Purdue's mascot is the Boilermaker.) The program, which began in 2016, has provided \$9.5 million in ISAs to almost 760 Purdue students, representing 120 unique academic majors. The program was limited to junior and seniors in its first year and was expanded to include sophomores in its second year. Purdue's program is intended not to replace grants, scholarships, or government-subsidized student loans, but rather is an option for students who might otherwise take out private loans or federal Parent Plus loans, each of which carry higher interest rates than subsidized loans.

Though ISAs can provide students with an additional option to cover the cost of college and some universities have implemented programs, the funding provided through an ISA is borrowed money that needs to be repaid. According to the American Institutes for Research, 2017 brief on Income Share Agreements: An Alternative to Traditional College Financing, "ISAs share many of the advantages of income-driven loan repayment, but ISAs are based on a time period rather than a debt amount. Recipients could end up paying more or less than they originally receive over the course of the agreement." Additionally, ISAs do not treat all borrowers the same and risk assessment could take into account credit history and field of study. In a recent 2017 publication by New America, "Income Share Agreements (ISA) Aren't a Solution to Student Debt," cautions if not appropriately regulated, ISAs could be susceptible to irresponsible and unfair borrowing to vulnerable student populations.

BPPE discussed ISAs at a 2019 Advisory Committee meeting, during which the Bureau's staff counsel advised that the Act does not specifically address this model but does intend for students to enroll or start an education program only after the total charges of the program are disclosed. Questions were raised about whether enrollment agreements fully present program charges, including financing, given that interest charges may not be known up front, although traditional financing includes a set interest rate percentage which achieves the requirement for up-front information to be provided. According to media reports, as a workaround in BPPE's consideration for approval of an institution that utilizes ISAs, the institution stopped offering ISAs and instead offered a similar model where graduates don't pay until they secure a job at a minimum salary, but payments back to the school for training are a percentage of their monthly income. Rather than providing a time limit for this arrangement (such as only paying for a certain amount of time), a California student at this institution would keep paying monthly until the full tuition is paid.

Staff Recommendation: *The Bureau should provide an update on ISAs, including how many approved institutions use something like an ISA. The Bureau should update the Committees on statutory changes it has considered related to this model and how to ensure students are provided affordable, quality training opportunities using new funding mechanisms.*

OPERATIONAL STANDARDS AND COMPLIANCE

ISSUE #9: (MINIMUM OPERATING STANDARDS.) Are the criteria established in the Act that allow an institution to become licensed strong enough to protect students and promote student success?

Background: Existing statutory authority requires the Bureau to adopt by regulation minimum operating standards for institutions. Specifically, EC section 94885(a) requires the Bureau to adopt by regulation minimum operating standards for an institution that shall reasonably ensure that all of the following occur:

- (1) The content of each educational program can achieve its stated objective.
- (2) The institution maintains specific written standards for student admissions for each educational program and those standards are related to the particular educational program.
- (3) The facilities, instructional equipment, and materials are sufficient to enable students to achieve the educational program's goals.
- (4) The institution maintains a withdrawal policy and provides refunds.
- (5) The directors, administrators, and faculty are properly qualified.
- (6) The institution is financially sound and capable of fulfilling its commitments to students.
- (7) That, upon satisfactory completion of an educational program, the institution gives students a document signifying the degree or diploma awarded.
- (8) Adequate records and standard transcripts are maintained and are available to students.
- (9) The institution is maintained and operated in compliance with this chapter and all other applicable ordinances and laws.

The Bureau believes these provisions limit its authority to establish appropriate and necessary additional operating standards. The Bureau requests additional minimum operating standard areas, to address the cost of an educational program, student outcomes, institutional improvement, and educational quality.

The discussion of program value based on a specific amount of revenues from non-publicly funded sources has been one of significant interest for many years, and has been raised as a potential criteria for approval by BPPE or one to determine the ability of an institution to enroll students. An 85 percent cap on revenue at for-profit schools from these federal student aid funds was enacted in 1992 to address significant loan default rates by students attending such institutions. In 1998, the cap was raised to 90 percent, resulting in the so-called 90/10 rule. Federal law specifies that for-profit institutions can only receive up to 90 percent of total revenues from federal student aid programs (veterans' educational benefits have been historically excluded from this calculation, although recent changes at the federal level will include these monies to be calculated in the 90 percent figure.) Some argue that the idea behind the Title IV revenue cap was a market viability test: that taxpayers should not prop up low-quality schools that could not survive in the open market. Institutions offering a quality education at a competitive price should be able to attract at least 10 percent of their revenue from employers, scholarship providers, or students who are willing to pay the tuition.

California's financial aid program, which assists students and families in affording the cost of college, establishes minimum operating standards to protect students and the \$2.6 billion taxpayer investment in the Cal Grant program. California Education Code establishes additional criteria beyond what is required for participation in federal financial aid. In addition to other standards, institution must have

fewer than 40 percent of undergraduate students borrowing federal loans, or be below the three-year cohort default rate of 15.5 percent and be above the graduation rate of 30 percent.

Upon completion of many BPPE-approved programs, graduates should be eligible for registration, certification or licensure by a state regulatory body. Regulatory programs such as those within the DCA are often independently governed entities that establish standards and criteria for successful licensure, at the heart of which are public protection standards measured through proof of completion of a particular training program and satisfactory performance on a written and practical examination. Students may benefit from stronger requirements to ensure that individuals who complete a program designed to lead to licensure are actually able to do so. In 2014, the federal government required, as a condition of eligibility for student financial aid, that colleges certify that their career programs satisfy state and federal accrediting and licensing requirements for the jobs for which the program purports to prepare students. These student protections were repealed in 2019, however it remains important for California students, who intend to work in California after finishing their training and education, to have assurances that this occurs.

Staff Recommendation: *The Committees may wish to discuss changes to minimum operating standards to authorize the Bureau to adopt additional minimum operating standards in the following areas:*

- *The amount the institution's charges for its educational programs, to ensure the amount is fair and reasonable as compared with the average cost of similar educational programs offered by other private postsecondary education institutions and as compared to expected student earnings upon graduation.*
- *To ensure an acceptable number of students who enroll in the institution's educational programs complete those programs, obtain licensure, and obtain gainful employment in the field of training, as applicable.*
- *To ensure the institution periodically evaluates its educational program offerings and institutional effectiveness and takes active measures to make improvements where warranted.*
- *To provide an acceptable level of quality and academic rigor of an institution's educational programs.*
- *To establish a market indicator as to whether programs are of sufficient value by requiring a specific amount of revenues to come from non-publicly funded sources.*
- *To ensure that California students qualify for state certification, licensure, registration, or other recognized regulation upon completion of a program.*

COMPLAINTS AND ENFORCEMENT

ISSUE #10: (COMPLAINT PROCESSING.) BPPE struggles to respond to complaints and questions have been raised about swift decreases in complaint backlogs and whether complaints were closed as non-jurisdictional but could have provided valuable information and pointed to trends to inform BPPE's enforcement work. What is the status of complaints? What are some examples of complaints that were closed or deemed out of BPPE's jurisdiction? What does BPPE do to connect dots between potentially non-jurisdictional complaints and enforcement cases those complaints could potentially, even if indirectly, inform?

Background: As previously outlined, the Bureau is responsible for receiving and resolving complaints against licensed and registered institutions. Since its inception, the Bureau has faced significant

backlogs in complaints investigations. Many BPPE complaints are generated by BPPE staff and although student complaints remain a priority and BPPE-generated complaints may also be connected to investigations stemming from student complaints, it would be helpful to understand how BPPE tracks all complaints. The Bureau has made a number of changes including better incorporating staff across divisions, training staff within the complaints unit, and refining the complaint process but concerns remain. In November of 2018, 57 percent of complaint investigation cases took more than a year to close; by October 2019 approximately 24 percent of cases were left pending for more than 365 days. However, in looking at case closure information provided by the Bureau, nearly 66 percent of cases appear to have been closed because the complaint could not be substantiated or the Bureau determined it did not have jurisdiction. It would be helpful for the Committees to understand the types of complaints that were closed as non-jurisdictional and what BPPE does to ensure all aspects of the organizations connect to ensure that key information is not overlooked.

Staff Recommendation: *The Bureau should provide additional information regarding cases deemed non-substantiated or non-jurisdictional and the process used to ensure that complaints that may appear unrelated on their face are not actually indicative of broader issues. The Committees should work to determine whether the Bureaus swift closure of so many complaints were appropriate, if the Bureau needs additional guidance or directive, or if changes to the scope of prohibited and allowable institutional activities within the Act are warranted.*

ISSUE #11: (ENFORCEMENT ACTIONS.) BPPE has been limited in its ability to take formal disciplinary action against schools and believes an update to the law is necessary.

Background: The Act, (EDC § 94937) authorizes the Bureau to take formal disciplinary action to place an institution on probation or suspend or revoke the institution’s approval to operate if a violation of the Act has resulted in harm to a student. However, EDC § 94801 (d)(6) provides Legislative intent that the Bureau work to prevent harm to students and the deception of the public that results from fraudulent or substandard educational programs and degrees. The Bureau reports that it has attempted to bring accusations against institutions for violation of the Act where there was potential harm to students, with the goal of using disciplinary action to prevent students from being harmed, in accordance with Legislative intent. However, the Office of the Attorney General has returned accusations with the opinion that the Bureau could not file an accusation because there was no demonstration of actual student harm as required by the statute. This change is aligned to other DCA agencies, such as the Bureau of Security and Investigative Services (BPC §7591) and Bureau of Household Goods and Services (BPC §9810), which are authorized to suspend or revoke certain licenses based on a finding the licensee has engaged in certain violations of law.

Staff Recommendation: *The Committees should consider amending EDC § 94937 to authorize the Bureau to take disciplinary action based on potential harm to students.*

SCHOOL CLOSURES AND STUDENT TUITION RECOVERY FUND

ISSUE #12: (STRF.) Are STRF monies being utilized to the fullest extent possible in order to benefit students? Should the Bureau be authorized to use STRF to fund operations?

Background: An important tool to assist harmed students is the Student Tuition Recovery Fund (STRF). The STRF, administered by the BPPE, exists to relieve or mitigate economic loss suffered by students enrolled at a non-exempt private postsecondary education institution due to the institutions’

closure, the institutions' failure to pay refunds or reimburse loan proceeds, or the institutions' failure to pay students' restitution award for a violation of the Act. STRF is capped in statute at \$25 million. Institutions are required to assess students an amount established in regulation by the BPPE and remit fund to the BPPE for STRF. In 2010, the STRF assessment was established at \$2.50 per \$1000 of tuition charged. In 2013, that amount was reduced to \$0.50 per \$1000. In 2015, this amount was reduced to \$0.00, as the STRF had exceeded the statutory cap.

BPPE provided notice that effective February 8, 2021, the STRF assessment rate changed from \$0 per \$1,000 of institutional charges back to \$0.50 per \$1,000. Institutions must include STRF disclosures on both enrollment agreements and school catalogs and, if applicable, collect STRF assessments from enrolling students. It is unclear how institutions can comply with this update right now for students currently enrolled and unclear if revised enrollment agreements with retroactive STRF assessments would be necessary, or if that action would violate an existing agreement. Given that the Act does not specify a STRF adjustment process, nor is there a process and timeline by which institutions can prepare for an increase or decrease in the assessment, it would be helpful for the Committees to understand the impact of, and process for this update, as well as any necessary changes to ensure seamless transitions to funding STRF.

The Bureau indicates that the increasing number of precipitous school closures has impacted staffing and resource levels. The Bureau points to costs associated with ensuring colleges follow closure procedures, identify a custodian of record, and notify students of their rights and availability of documents. The Bureau points to the following examples

- School #1 closed on December 1, 2018. The owner notified the Bureau that he would not designate a custodian of records due to the cost it would take to hire someone to serve in this role. This is a common reason that owners share with the Bureau as to why they have not identified a Custodian of Records. As a result, students have been unable to obtain their records.
- School #2 and School #2b closed on March 1, 2019 and March 28, 2019 respectively, and both schools failed to identify a Custodian of Records. As a result, students have been unable to obtain their records.
- School #3 closed on November 6, 2017 and did designate a Custodian of Records; however, the custodian has been non-responsive to date, and the students have to find alternative ways to obtain their records.

The Bureau is requesting to expand the use of the STRF to internally build the capacity of the Bureau to serve, at least temporarily, as the keeper of records for schools that fail to provide a feasible plan for the disposition of the records and/or fail to notify students how to obtain those records. This would entail approval of an expanded use of the STRF (possible statute or regulatory changes) and then hiring additional positions whose duties would entail obtaining, storing, organizing, and managing student records and student records requests, on behalf of schools who have failed to comply with these provisions. The implementation of this recommendation would allow the Bureau to more proactively ensure the protection of students' rights, as they relate to access to academic and financial records.

A STRF with assets hovering near the cap means that students are not being provided reimbursement for losses they incur. This has been a consistent problem, and the Legislature has asked for years how best to assist harmed students. For example, are there ways to simplify and streamline the application

process? Should STRF be expanded to assist parents and family members who take out loans on behalf of students or co-sign with students? Are there appropriate uses for STRF to provide students recourse and help make their lives full after damage from investment in a BPPE-approved program?

Staff Recommendation: *The Committees may wish to consider whether it is appropriate to use funds paid by students to the STRF to fund the operations of the Bureau. Instead, the Committees may wish to evaluate whether the funds from the Surety Bonds, as outlined below, could be used for this purpose. The Bureau should update the Committees on the new STRF assessment requirements. The Committees may wish to expand the use of STRF to assist harmed students.*

ISSUE #13: (SURETY BONDS.) A requirement for a surety bond may ensure that all California students are protected in the event of institutional failure.

Background: According to the Bureau, the precipitous closures of several large private postsecondary education institutions in California over the last several years has resulted in direct and devastating harm to thousands of students who invested significant time and money but were not able to complete their programs of study as promised by the institutions. While STRF exists in California to mitigate economic loss suffered by a California resident who was enrolled in a California residency program and who prepaid tuition, the statutory limitations on the utilization of STRF funds fail to allow for a broader range of economic relief that may be in the best interest of the students. Additionally, the direct costs to the Bureau are proportional to the size of the institution with large-scale closures using significant financial and personnel resources.

Several states require private postsecondary institutions to post a surety bond as part of the states' process for submission of an application for approval to operate. States such as Arizona, Alaska, Florida, Georgia, Maryland, Nebraska, New Mexico, South Carolina, Tennessee, Texas, and Utah all require postsecondary school bonds. In the event of a precipitous school closure, the funds may be used for several purposes, including but not limited to:

- Compensation of students or students' parents for lost prepaid tuition;
- Payment of reasonable expenses related to the storage, maintenance and availability of student records;
- Compensation for faculty to remain on a temporary basis to complete instruction through the end of a term or course; and,
- Reimbursement of former students of the closed institution for the cost of obtaining academic records.

Over the past several years, the Bureau has experienced several precipitous closures of large institutions having significant student populations, such as Marinello Schools of Beauty, ITT Technical Institute, ECA (Brightwood), Dream Center (Argosy), and Corinthian Colleges. The Bureau argues that funds from a surety bond could have been used in some cases for the temporary continuity of instruction for students near the completion of their programs to finish or to fund the storage and maintenance of student records, or to provide the funding for school staff to remain on temporarily to assist students in transferring to other institutions.

The closure of these larger institutions requires the Bureau to send its personnel throughout the state to assist the students. These unforeseen closures cannot be predicted in the Bureau's budget forecasting.

These costs range from travel and lodging for the personnel going to the sites to assist students, to lost personnel hours because the larger closures require additional personnel to be pulled away from their regular duties for days or weeks leaving other divisions temporarily shorthanded and resulting in temporary backlogs in these other divisions.

The Bureau notes that other DCA boards and bureaus have specific statutory authority to require a bond as part of the licensure requirement. For example, The Board of Pharmacy, Contractors State Licensing Board, Bureau of Cannabis Control, and the Cemetery and Funeral Bureau all require surety bonds.

Although the cost for institutions to obtain surety bonds varies, research into a number of companies offering surety bonds has revealed that the premiums paid by institutions for surety bonds typically depend upon the institution's gross tuition or projected gross tuition. Additionally, as with other types of insurance, premium costs are affected by the institution's financial health. The Bureau indicates that the amount of the surety bond would be based on a number of factors such as, the number of students enrolled and/or the institution's financial health.

Staff Recommendation: *The Committees may wish to consider approving the Bureau's request to amend the statute to provide the Bureau with the authority to require surety bonds as part of the application process for an approval to operate.*

ISSUE #14: (OFFICE OF STUDENT ASSISTANCE AND RELIEF.) Originally envisioned as an independent ombudsperson to serve as a single student advocate point of contact to guide students before, during and after their time at a Bureau-regulated institution, OSAR has expanded its role and been provided additional positions and revenue, yet student harm remains and STRF goes largely uncollected. What is the status of OSAR and has the Office met the original mission of helping students?

Background: In 2015, following the high-profile collapse of several for-profit institutions, the Legislature sought to ensure that students were provided meaningful and adequate support in securing economic recovery, both under the Student Tuition Recovery Fund and under federal loan forgiveness and cancellation provisions. Initially, the Legislature proposed providing resources directly to legal aid organizations for those organizations to provide independent advocacy to assist students in seeking loan forgiveness and STRF resources. Governor Brown rejected the legal aid proposal and the compromise was the creation of the OSAR. Based on information provided by the Bureau, it appears that much of OSAR's activities have focused on general public outreach regarding educational options. It does not appear that these activities are consistent with the Legislature's intent.

DCA reported in its December report to the Legislature that OSAR has been receiving COVID-19 related claims and expects these claims to increase. COVID-19 related STRF claims include claims from students who regarding the quality of education received when institutions moved from in person instruction to online education. DCA reports that to prepare, OSAR instituted training for staff to assist with COVID-19 related claims, formed an Economic Loss Review Committee to assist with determining STRF eligibility, and is working with the enforcement side of the Bureau to develop a process for obtaining student refunds from the school when the school closure is first announced. OSAR has also developed a method for delivering closed school content outreach via WebEx webinars. To date, OSAR has held five remote school closure events and is working with the Department to record the live delivery of a closed school workshop that can then be uploaded to

OSAR’s website with a link provided to students, as needed. DCA notes that OSAR has collaborated with many of its external partners, including the California State Approving Agency for Veterans Education, the California Transition Assistance Program, local school districts, the California Community Colleges Chancellor’s Office, the California Student Aid Commission, and the United States Department of Education, to discuss strategies and shared outreach opportunities during the pandemic.

Staff Recommendation: *The Bureau should provide an update on how the work of the OSAR has supported students harmed by the practices and/or closure of for-profit institutions in receiving restitution, recovery, and/or loan forgiveness. The committees may wish to consider whether the OSAR is the appropriate approach to solving the initial problem identified by the Legislature.*

COVID-19

ISSUE #15: (COVID-19.) The COVID-19 pandemic has impacted students, schools, and Bureau operations.

The tolls of the COVID-19 pandemic are severe and the crisis has resulted in devastation to the lives of millions, as well as an economic downturn, the likes of which have not been experienced for generations. Concerns have been raised in media reports and studies about the connection between economic downturns and increased targeting of unemployed Californians by postsecondary education institutions. From 2007-2010 undergraduate enrollment at for-profit colleges skyrocketed, growing by as much as 19 percent a year in California and 22 percent a year nationally. According to the National Student Clearinghouse, a nonprofit and nongovernmental organization focused on educational reporting, in the last year there have been significant decreases in enrollment at community colleges and other public and nonprofit universities, but growth at for-profit colleges.

As the number of students served by private postsecondary institutions has increased, so has the focus on fraudulent practices and low academic standards. There have been numerous high-profile federal investigations into the practices of for-profit institutions in recent years. Among the most notable are the United States Government Accountability Office (GAO) series of investigations raising concerns regarding the amount of federal student aid dollars directed to for-profit institutions, the misleading and deceptive recruitment practices at certain institutions, and substandard academic performance expectations in some for-profit programs.

Federal data also raises important questions about program cost and student outcomes within the sector. Students from for-profit institutions have higher default rates on federal student loans than in other sectors, accounting for nearly half of all defaults. According to data from the National Bureau of Economic Research (NBER), for-profit student defaults are 8.7 percent higher than four-year public institutions and nonprofits and 5.7 percent higher than community colleges. Student satisfaction information shows for-profit students are less likely to believe their education was worth the price paid. While NBER data, which attempts to adjust for student population differences, indicates for-profit students have higher probability of staying with a program through the first year and are somewhat more likely than community college students to obtain an AA degree, they are less likely to continue to higher-level college courses and to gain a BA degree. Further, NBER indicates that for-profit students are more likely to be idle (not working and no longer enrolled in school) six years after starting college, and are more likely to have experienced substantial unemployment since leaving school.

According to a recent report, *Student Debt and the Class of 2017*, issued by The Institute for College Access and Success (TICAS), nationally, average student debt at graduation in 2016 ranged from \$20,000 in Utah to \$36,350 in New Hampshire, and new graduates' likelihood of having debt ranged from 43 percent in Utah to 77 percent in West Virginia. The report stated that average debt varies even more across colleges, from a low of \$4,600 to a high of \$59,100, and the share of students graduating with loans ranges from six to 98 percent. Additionally, the TICAS report found that the burden of student debt is not just about overall debt levels, but also about the types of loans students take out. TICAS asserts that federal student loans come with crucial consumer protections and repayment options not guaranteed by private, nonfederal loans, noting that the average debt in California is \$22,744 at public and private non-profit colleges. According to the report, about 53 percent of students graduate with debt, ranking California 48th and 37th lowest nationally.

According to DCA in the July 2020 BPPE biannual report to the Legislature:

“The economic impact triggered by COVID-19 will negatively impact California students of private postsecondary education institutions. While many impacts have already occurred, such as the physical closing of campuses throughout the state, the long-term consequences of the pandemic will likely be unknown for some time. The higher education industry tends to be cyclical. As the Bureau saw during and after the previous recession caused by the 2007 financial crisis, private postsecondary education institutions experienced a significant increase in enrollment numbers, mostly because students were attracted to the flexible schedules they offered. In the past few years, however, with the economy largely recovered, the state has experienced a sizeable number of closures of large institutions, impacting tens of thousands of California students. How the impacts of COVID-19 will unfold over the next several months and years is largely unknowable. Preliminary research conducted by the Bureau, informed by conversations with stakeholders and others in the industry, suggests that enrollment this fall could drop by 10-25%. Should this occur, severe negative impacts to the Bureau's budget would occur because the Bureau is special funded with approximately 90% of revenue derived from the gross annual revenue of private postsecondary educational institutions. A sizeable drop in enrollment would likely result in institutional closures and a reduction in the number of institutions applying for approval. Looking out approximately a year, the Bureau expects institutional closures, student complaints and STRF applications for economic loss increasing, likely in mid-summer through spring 2021. While the present situation is quite different from the last recession, if history is a guide, the Bureau could expect an upward swing in enrollment and new institutional approvals sometime in late 2021 into 2022.

On March 7, 2020, the California Department of Public Health issued guidance on COVID-19 for higher education institutions in California. The Bureau has placed a link to this guidance directly on its homepage. Additionally, the Bureau has received several inquiries from institutions on how to implement distance learning. As a response, the Bureau has produced a document titled, “Tips for Implementing Distance Education”, which is also linked directly from its home page. Finally, on April 23, 2020 Governor Newsom announced that most private student loan servicers had agreed to provide payment and other relief to more than 1.1 million Californians with privately held student loans. The Bureau has a dedicated webpage with information and links for holders of these loans, which includes contact information for private student loan servicers offering relief.”

In response to the COVID-19 pandemic, the Governor instituted a number of actions, and issued numerous executive orders in order to address the immediate crisis, including impacts on the state's healthcare workforce stemming from the virus. BPPE notes that it implemented teleworking allowances, and staff began teleworking in March 2020. The BPPE notes that it follows the DCA's teleworking policy. According to the BPPE as of December 2020, approximately 75%-90% of staff are teleworking on any given day.

Regarding other changes necessary to Bureau operations due to the COVID-19 pandemic, the BPPE noted that operations related to compliance inspections of institutions had to be adjusted. Although the dates were not specified, the BPPE reports that compliance inspections were placed on hold for several months due to COVID travel restrictions and the fact the institutions were not operating or transitioning into distance education. As of December 1, 2020, the BPPE noted that compliance inspections resumed on a case-by-case basis. Staff were able to work on other projects and reviewed catalogs/enrollment agreements and performance fact sheets in preparation of future inspections. Additionally, staff assisted in processing Student Tuition Recovery Fund Claims.

Staff Recommendation: *The Bureau should advise the Committees on its response to COVID-19 and inform the Committees if there are any statutory or regulatory changes necessary to address the COVID-19 pandemic or any future state of emergencies. Additionally, the BPPE should advise the Committees of any issues or concerns related to delayed compliance inspections. What is the BPPE's plan to increase compliance inspections to meet the backlog?*

TECHNICAL CHANGES

ISSUE #16: (TECHNICAL CHANGES MAY IMPROVE THE EFFECTIVENESS OF THE ACT AND BUREAU OPERATIONS.) There are amendments that are technical in nature but may improve BPPE operations

Background: In certain instances, technical clarifications may improve BPPE operations and application of the Act. The Bureau has requested a number of clarifying, noncontroversial and technical changes, including:

- Revise the definition of educational program to extract short courses by making it clear that a single course or module that is part of a set of courses or modules does not, in itself, constitute an educational program, and provide for a minimum number of hours of instruction at which a short course qualifies an educational program.
- Remove the reference to “inactive status” for an approval to operate, and instead require institutions to use the appropriate licensure process.
- Amend the definition of postsecondary education to strike the term “curriculum” and instead use the term “instruction” as it more appropriately relates to the scope of the Bureau's oversight and enforcement powers.
- Amend the definition of continuing education to clarify that continuing education exemption may not apply to degree-granting programs.

- Define institutional substantive changes that require Bureau approval to include other items that should be reviewed by the Bureau.

Staff Recommendation: *The Committees should amend the Act to include technical clarifications.*

**CONTINUED REGULATION OF PRIVATE POSTSECONDARY EDUCATION BY THE
BUREAU FOR PRIVATE POSTSECONDARY EDUCATION**

ISSUE #17 (CONTINUED REGULATION BY BUREAU FOR PRIVATE POSTSECONDARY EDUCATION.) Should the licensing and regulation of private postsecondary educational institutions be continued and be regulated by the current BPPE?

Background: The Bureau is charged with regulating private colleges and universities that range from small colleges with single, specialized certificate programs to large publicly traded institutions with multiple degree programs. Some of these colleges receive significant public funding through financial aid programs, others do not receive taxpayer resources. The Bureau’s current oversight structure treats these varying types of institutions relatively similarly.

Private postsecondary institutions play a role in ensuring access to higher educational opportunities for California’s students. The landscape of schools regulated by the Bureau has evolved significantly in recent decades. These institutions receive significant public funds; under federal law, up to 90% of revenues can come from the Title IV financial aid program. High-profile state and federal investigations have revealed deceptive and illegal practices by some institutions within the sector. Under the Obama Administration, regulators responded by increasing student outcome and institutional accountability measures. The Trump Administration reversed course. With the Bureau’s approval enabling these institutions to access the Title IV program, and the USED relaxing rules governing these institutions, the Committees may wish to consider whether the existing statutory structure adequately protects students and taxpayers. As the Committees evaluate the Bureau’s performance and determine future actions, several fundamental policy questions should be addressed: What is the state’s interest in regulating private and for-profit colleges? Does the state have an additional interest/role in oversight of institutions receiving federal funding? Is the Bureau properly equipped to meet the state’s goals for oversight and consumer protection?

Staff Recommendation: *No recommendation at this time.*