# BACKGROUND PAPER FOR THE Bureau For Private Postsecondary Education

**(Joint Oversight Hearing, April 21, 2014, Senate Committee on Business, Professions and Economic Development, Senate Committee on Education, Assembly Committee on Business, Professions and Consumer Protection and Assembly Committee on Higher Education)**

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

## BRIEF OVERVIEW OF THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION

**History and Function of the Bureau for Private Postsecondary Education**

The Bureau for Private Postsecondary Education (BPPE) is responsible for oversight of private postsecondary educational institutions operating with a physical presence in California. Established by Assembly Bill 48 (Portantino, Chapter 310, Statutes of 2009) after numerous legislative attempts to remedy the laws and structure governing regulation of private postsecondary institutions, the bill took effect January 1, 2010, to make many substantive changes that created a new, solid foundation for oversight and gave the new BPPE an array of enforcement tools to ensure schools comply with the law.

The state's program for regulation of private postsecondary and vocational education institutions has historically been plagued by problems. During the late 1980's, the state developed a reputation as the "diploma mill capital of the world." During this period, State Department of Education regulated the private postsecondary education industry. As a result of concerns about the integrity and value of the degrees and diplomas issued, widely varying standards, the lack of enforcement provisions, and exemptions from oversight authorized in the statute, a comprehensive reform bill was enacted. SB 190 (Morgan) created the Private Postsecondary and Vocational Education Reform Act of 1989 (Reform Act) to overhaul the state's regulatory program and transferred oversight responsibility for the program to the 20-member Private Postsecondary and Vocational Council (Council). Concurrently, the Maxine Waters School Reform and Student Protection Act (Waters Act) was enacted. The provisions of the Reform Act and the Waters Act were merged, but doing so created a fragmented structural framework for regulation of private postsecondary and vocational education institutions with numerous duplicative and conflicting statutory provisions which would plague California's oversight of these institutions until the law sunset on July 1, 2008.

In the years following enactment of the Reform Act, concerns were expressed about the Council's implementation of the Act. In 1995, the California Postsecondary Education Council (CPEC) found there were potentially up to 1,000 unapproved institutions operating in California and the Council lacked the enforcement powers or punitive measures needed to address these violations. While CPEC

recommended amending the Act to provide the Council with the authority and other resources to ensure that all institutions operate in compliance with the Act, no action was taken on this proposal. In 1997, AB 71 (Wright) was enacted to create the former Bureau For Private Postsecondary and Vocational Education (BPPVE) within the Department of Consumer Affairs (DCA), transferred responsibility for administration of the Reform Act to BPPVE and extended the Reform Act's sunset date to January 1, 2005.

In 2000, the Bureau of State Audits (BSA) conducted an audit of the DCA to determine whether the Department was properly overseeing its regulatory boards and bureaus. The BSA reviewed four boards and bureaus in detail, including BPPVE and found that the DCA was not fulfilling its oversight responsibilities and was allowing weaknesses in licensing and complaint processing to continue. In 2002, the DCA's Internal Audit Office completed a review of BPPVE's programs and operations. The DCA's Internal Audit Office made a number of recommendations for BPPVE to modify and improve its operations. During 2002, BPPVE completed its first Sunset Review before the Joint Legislative Sunset Review Committee (JLSRC). As part of this review, BPPVE committed to reestablish the Bureau's Advisory Board, simplify and streamline its appeal procedures, sponsored legislation to change current statutes and adopt regulations to ensure comprehensive and effective application approval procedures, enforcement and disciplinary actions and address deficiencies noted in the BSA audit. In 2003, SB 364 (Figueroa) required BPPVE work with JLSRC staff to streamline the Reform Act, determine the cost and staffing needed to meet its statutory obligations, improve its data collections and dissemination systems and to report to the Legislature on a number of the changes requested.

In 2004, the Joint Committee on Boards, Commissions and Consumer Protection (Joint Committee) held a special hearing regarding BPPVE and recommended that the Reform Act be revised to make it intelligible and enforceable and that the Administration and the DCA should consider restoring, at least temporarily, the Bureau's staffing resources to clear out existing backlogs.

The Joint Committee also recommended that the DCA appoint an Operations and Enforcement Monitor to complete an objective assessment of California's regulation of private postsecondary and vocational education institutions, including both the administrative operations of BPPVE and the provisions of the Reform Act. In 2004, in response to the persistent problems with BPPVE, the Legislature enacted SB 1544 (Figueroa, Chapter 740, Statutes of 2004), which required the appointment of an Enforcement Monitor (Monitor) to provide an in-depth and impartial examination of BPPVE's operations. The Monitor's report, presented to the Joint Committee on December 7, 2005, outlined a "twenty-year record of repeatedly identified, fundamental problems in every one of the Bureau's key operations." The Report found that BPPVE both inadequately protected consumers and impeded the expansion of quality postsecondary and vocational educational opportunities

The concerns and recommendations raised by the Monitor were generally consistent with concerns raised by the CPEC in 1995, the 2000 BSA report and the DCA's own 2002 internal investigation. At the time of its sunset, BPPVE had not addressed many of its fundamental problems with oversight and enforcement. The Monitor's report stated many of the root causes of enforcement and oversight failures can be traced back to deficiencies within the Reform Act.

During the time that the BPPVE and Former Act were sunset, the private postsecondary education industry operated in California without regulation or oversight for the approximately 1,500 private postsecondary institutions that had been approved by BPPVE, including approximately 1,200 vocational training schools and 300 branch satellites, as well as, approximately 300 degree-granting

institutions with an estimated student enrollment of approximately 400,000. BPPVE registered approximately 700 private institutions providing short-term career/seminar training, continuing education, intensive English language programs, and license exam preparation courses. Of those students, approximately 280,000 students attended non-degree-granting institutions and the remaining 120,000 attended degree-granting institutions. BPPVE approved institutions served a significant portion of students seeking postsecondary educational and vocational training services. In 2006, BPPVE approved institutions that served as many students as were served by the entire California State University system. It is generally believed that BPPVE institutions, especially the vocational schools, tend to serve segments of the population that are underserved by the traditional public and private postsecondary education institutions.

AB 48 established BPPE's authority to regulate private postsecondary institutions and enforce the provisions of the new California Private Postsecondary Education Act (Act) and responded to the major problems with the former laws governing the industry in California. The Act requires all unaccredited colleges in California to be approved by BPPE, and all nationally accredited colleges to comply with numerous student protections. It also establishes prohibitions on false advertising and inappropriate recruiting. The Act requires disclosure of critical information to students such as program outlines, graduation and job placement rates, and license examination information, and ensures colleges justify those figures. The Act also guarantees students can complete their educational objectives if their institution closes its doors while providing BPPE with enforcement powers necessary to protect consumers. The Act directs BPPE to:

- Create a structure that provides an appropriate level of oversight, including approval of private postsecondary educational institutions and programs;

- Establish minimum operating standards for California private postsecondary educational institutions to ensure quality education for students;

- Provide students a meaningful opportunity to have their complaints resolved;

- Ensure that private postsecondary educational institutions offer accurate information to prospective students on school and student performance, thereby promoting competition between institutions that rewards educational quality and employment success; and,

- Ensure that all stakeholders have a voice and are heard in the operations and rulemaking process of BPPE.

BPPE also actively investigates and combats unlicensed activity, administers the Student Tuition Recovery Fund (STRF), and conducts outreach and education activities for private postsecondary educational institutions and students within the state.

While the Act became effective on January 1, 2010, it was not until passage of the 2010-11 Budget Act on October 8, 2010, that BPPE was given the funding to support its operations.

The current BPPE mission statement is as follows:

> ***The Bureau exists to promote and protect the interests of students and consumers: (i) through the effective and efficient oversight of California's private postsecondary***

***educational institutions, (ii) through the promotion of competition that rewards educational quality and employment outcomes, (iii) through proactively combating unlicensed activity, and (iv) by resolving student complaints in a manner that benefits both the complaining student and future students.***

The BPPE is one of 39 boards, bureaus, committees, and other programs at DCA.

As a bureau under DCA, BPPE does not have a board with a membership made up of appointed members. Instead, a bureau operates under the oversight of a Bureau Chief who is appointed by the Governor and serves under the direct authority of the Director of DCA. BPPE has an Advisory Committee tasked with advising the Bureau 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. BPPE in turn is tasked with actively seeking input from, and consulting with, the Advisory Committee regarding the development of regulations to implement the Act.

The Advisory Committee is made up 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 private postsecondary education institutions; two members appointed by the Director of DCA who are employers that hire institution students; one public member appointed by the Senate Committee on Rules and; one public member appointed by the Speaker of the Assembly.

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 and Short Bio | Appointment Date | Term Expiration Date | Appointing Authority |
|---|---|---|---|
| **Shawn Crawford, Chair**<br>Mr. Crawford is the Vice President for Regulatory Affairs of ITT Educational Services, Inc. and is responsible for overseeing and directing the regulatory and accreditory efforts of the company's ITT Technical Institutes and Daniel Webster College. He was previously the Director of Compliance at Great American Financial Resources, Inc., a diversified financial services organization in Ohio. In this role he was responsible for directing legislative and regulatory compliance, including anti-money laundering and anti-fraud programs. Prior to this he was with Federated Department Stores, Inc. in Cincinnati, where he was involved in ensuring compliance with the Employee Retirement Income Security Act of 1974 and managing employee benefits for more than 100,000 plan participants. Mr. Crawford earned a J.D. from the University of Pittsburgh School of Law, and a B.A. from Allegheny College. In addition to his role on the Advisory Committee, he is co-Chair of the California Coalition of Accredited Career Schools, and has served as a speaker and panelist for the Association of Private Sector Colleges and Universities and the Accrediting Commission of Career Schools and Colleges. | 2/10/2010 | N/A | DCA Director |
| **Margaret Reiter, Vice Chair**<br>Attorney Margaret Reiter was a consumer investigator with the | 3/10/2010 | N/A | Senate Committee on Rules |

| | | | |
|---|---|---|---|
| Los Angeles County Consumer Affairs Department for four years and worked for 20 years as a consumer prosecutor with the California Attorney General's Consumer Law Section. She has investigated or prosecuted businesses engaged in consumer fraud including foreclosure "consultants," mortgage lenders, debt settlement companies, vocational schools, living trust mill/annuity sellers, prepaid phone card companies, and tax refund anticipation loan providers. She has drafted consumer protection legislation, advocated for stronger consumer protection before regulatory agencies, trained other prosecutors and investigators, and prepared consumer alerts and spoken to the public on Truth-in-Lending, telephone slamming and cramming, truth in phone billing, bankruptcy, and vocational schools, among other consumer topics. | | | |
| **Katherine Lee-Carey**<br>Katherine Lee Carey (Kate) is Vice President and General Counsel for American Career College and West Coast University. In her role, Ms. Carey manages the institutions' legal and regulatory functions, as well as assisting with the management of compliance initiatives. Her responsibilities range from contract review to labor law to interpretation and compliance with state and federal laws and regulations. Prior to joining ACC/WCU in 2008, she was Vice President of Corporate Compliance with Universal Technical Institute in Phoenix, Assistant Director of Regulatory Affairs with Alta Colleges in Denver, and Director of Student Affairs with Westwood College Online. Prior to becoming involved in the private school sector, Ms. Carey was a criminal defense litigator in Denver. She is a graduate, magna cum laude, of Siena College in Loudonville, NY and University of Denver College of Law and is licensed to practice law in Colorado, Arizona, and California. | 1/25/2010 | N/A | DCA Director |
| **Marie De La Parra**<br>Marie Roberts De La Parra is the founder and principal of BMBCP, a socially responsible, Build It Green certified company with a focus to develop sustainable strategic master plans that create energy efficient communities and economic development. Ms. De La Parra is one of a handful of women sustainable developers. She holds a General Contractors and Landscape Contractors License. Early 2008, Ms. De La Parra appeared on radio station KBLX 102.9 in San Francisco with lead morning show host Kevin Brown; speaking on being a woman in a male dominated industry. She is now their resident green expert, linked to their six sister stations nationally located in New York, Mississippi, and North Carolina. Ms. De La Parra sits on multiple boards and councils that help the advancement of small businesses with contracting opportunities such as the: Caltrans Small Business Council District 4, Fresno Energy Cluster, the Northern CA Minority Supplier Development Council MBEIC ADHOC Input Committee, and in January 2010 was appointed by the DCA Director, Brian Stiger to the Advisory Committee. | 1/25/2010 | N/A | DCA Director |
| **Tamika Butler**<br>Tamika Butler serves as the California Director for Young Invincibles. In that capacity, she is responsible for the development of all of Young Invincibles' programs in California and building out Young Invincibles' operations on the West Coast. Prior to that, Ms. Butler was an attorney at | 2/26/2013 | N/A | Speaker of the Assembly |

| | | | |
|---|---|---|---|
| Legal Aid Society-Employment Law Center (LAS–ELC) from 2009-2012. She was the John and Terry Levin Fellow for the Fair Play for Girls in Sports project where she engaged in community education, negotiations, litigation and policy work on behalf of female youth—primarily in low-income communities—who were not afforded equal athletic opportunities under Title IX. Ms. Butler joined LAS–ELC as a Skadden Fellow in the Racial Equality Program expanding employment rights outreach to members of the African-American communities of the Bay Area. She received her J.D. in 2009 from Stanford Law School, and in 2006 received her BA in Psychology and BS in Sociology with a specialization in Criminal Justice from Creighton University, in her hometown of Omaha, Nebraska. She currently serves on the National Center for Lesbian Rights Board of Directors and is also a board member for the Center for Young Women's Development in San Francisco. | | | |
| **Ken McEldowney**<br>Ken McEldowney is executive director of Consumer Action, a San Francisco-based national consumer advocacy and education membership organization that has worked on food, insurance, utility, privacy, toxics, health care, banking, postal and telephone issues for 35 years. Along with other key staff members, he represents the consumer interest before state and federal regulatory bodies, Congress and the California Legislature. At Consumer Action, he has directed contracts with the FTC, FDA, Federal Reserve, DOT, CPUC and HUD. Prior to coming to Consumer Action Mr. McEldowney was consumer editor for a weekly newspaper. He is a graduate of the University of Michigan, with a BA in Political Science and graduate work in economics. Mr. McEldowney is immediate past president of the Consumer Federation of America (CFA)—a federation of nearly 300 pro-consumer organizations with more than 50 million individual members. He now serves as CFA's vice president. Among his other responsibilities, he sits on the California Public Utilities Commission's Universal Lifeline Telephone Service Trust Administrative Committee and the California Department of Insurance's CAARP Advisory Committee and is Secretary of the Coalition Against Insurance Fraud. Previously, he chaired the Consumer Subcommittee of the FCC Consumer/Disability Telecommunications Advisory Committee. In addition, Mr. McEldowney serves on the Consumer Literacy Consortium Board. | 1/25/2010 | N/A | DCA Director |
| **Patrick Uetz**<br>Patrick Uetz is a retired Colonel and Judge Advocate in the U.S. Marine Corps. As director of the University of San Diego Initiative to Protect Student Veterans, Col. Uetz is responsible for external affairs, assists with state and national advocacy, litigation, and generally draws the various aspects of the effort into a balanced, cohesive Initiative. Until recently, Col. Uetz served as Director of the Law Center and Staff Judge Advocate for the U.S. Marine Corps Installations West and Camp Pendleton; he previously held Law Center and senior legal advisor positions throughout the West and Pacific. Col. Uetz also has served as adjunct faculty at several military justice schools. He earned his BA from Albion College in 1983, a JD from University of Toledo College of Law in 1986, and an LLM from USD School of Law in 1993. | 2/26/2013 | N/A | Speaker of the Assembly |

| | | | |
|---|---|---|---|
| **Mitchell Fuerst**<br>Mitchell Fuerst is the President of Success Education Colleges, a growing system of allied health colleges (including: North-West College, Glendale Career College and Nevada Career Institute) based in the Los Angeles and Las Vegas areas. His mother, Marsha Fuerst, founded the Colleges in 1966. Mr. Fuerst joined the organization in 1994 and worked alongside his mother in a variety of positions, and subsequently followed in her footsteps as President in 2010. Mr. Fuerst serves on various corporate boards, has lectured extensively and is involved with numerous philanthropic organizations. He is the past President of the California Association of Private, Postsecondary Schools (CAPPS) and is a member of the Young Presidents Organization (YPO). Mr. Fuerst is a graduate of the California Polytechnic University, Pomona with a Bachelor of Science degree in Business Administration. | 1/26/10 | N/A | DCA Director |
| **Maria R. Anguiano**<br>Maria R. Anguiano serves as vice chancellor for planning and budget as well as chief financial officer for the University of California Riverside. Prior to that, she served as deputy chief of staff for strategic planning and analysis in the UC Office of the President president's immediate office. She also served as a senior advisor to the Bill and Melinda Gates Foundation Post-Secondary Success Team. Anguiano was an associate vice president at Barclays Capital in San Francisco and worked at Deloitte & Touche in San Diego. She is a member of Hispanas Organized for Political Equality, the Stanford Alumni Consulting Team, Latinos on the Fast Track, and the Association of Latinos in Finance. She holds an MBA from Stanford Graduate School of Business and a BA from Claremont McKenna College. | 5/8/2013 | N/A | Senate Committee on Rules |
| **(Vacant) Current or Past Student of Institution** | | | DCA Director |
| **(Vacant) Employer Member** | | | DCA Director |
| **(Vacant) Employer Member** | | | DCA Director |

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, E-blasts to stakeholder subscriber lists and electronic communications regarding policy and procedural changes are the primary way the Bureau communicates with the public. The Bureau also posts updates to Facebook and Twitter and is now beginning to blog. BPPE states that it updates its website with all pertinent information, including: Advisory Committee meeting agendas and meeting minutes; a list of approved institutions; and, institutions' annual reports which include specific data on programs, completion and job placement rates, as well as other important data aimed at helping potential students make informed decisions about enrollment in an institution. The BPPE website also features results from compliance inspections, formal disciplinary actions and citations.

## Fiscal, Fund and Fee Analysis

BPPE is funded through regulatory fees and license fees. At the end of FY 2012/13, BPPE reports that it had a reserve balance of 13.2 months and as such, does not expect a fund deficit. BPPE's six-month fund reserve limit, codified in Education Code Section 94930, was suspended in AB 110 (Blumenfield, Chapter 20, Statutes of 2013) until January 1, 2015. The majority of BPPE's revenue comes from a 0.75% assessment on an institution's annual revenue, up to a maximum of $25,000. BPPE provided a $3 million loan to the General Fund in FY 2011/12 which is still outstanding. The following is the past, current and projected fund condition of BPPE:

| **Fund Condition** | | | | | | |
|---|---|---|---|---|---|---|
| (Dollars in Thousands) | FY 2009/10 | FY 2010/11 | FY 2011/12 | FY 2012/13 | FY 2013/14 * | FY 2014/15 * |
| Beginning Balance | $1,028 | $1,397 | $6,473 | $8,350 | $10,548 | $11,458 |
| Revenues and Transfers | $393 | $8,411 | $10,696 | $9,928 | $10,516 | $10,713 |
| **Total revenue** | $393 | $8,411 | $10,696 | $9,928 | $10,516 | $10,713 |
| Budget Authority | $0 | $10,904 | $9,368 | $7,731 | $9,816 | $11,119 |
| Expenditures | $18 | $3,399 | $5,825 | $7,731 | $9,816 | $11,119 |
| Loans to General Fund | $0 | $0 | -$3,000 | $0 | $0 | $0 |
| Accrued Interest, Loans to General Fund | $0 | $0 | $0 | $0 | $0 | $0 |
| Loans Repaid From General Fund | $0 | $0 | $0 | $0 | $0 | $0 |
| **Fund Balance** | $1,403 | $6,409 | $8,334 | $10,547 | $11,247 | $10,841 |
| **Months in reserve** | 5 | 13.2 | 12.9 | 12.9 | 12.1 | 11.5 |

According to BPPE, enforcement expenditures have risen from a low of 13 percent in FY 2010-11 to 42 percent in the last two fiscal years. BPPE reports that licensing expenditures started off at 16 percent, since ensuring the licensure of institutions was determined to be the highest priority but has now decreased to account for approximately 11 percent of the Bureau's budget.

Through its divisions, DCA provides centralized administrative services to all boards, committees, commission and bureaus which are funded through a pro rata calculation that appears to be based on the number of authorized staff positions for an entity rather than actual number of employees. BPPE reports that pro rata expenditures accounted for 47 percent of the Bureau's budget in FY 2010-11, but only 23 percent in FY 2012-13. The Bureau states that the drop is because pro rata is calculated by authorized and not filled positions, so pro rata appears to be higher in FY 2010-11 when not all of the positions were filled.

| **Expenditures by Program Component** | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | FY 2009/10 | | FY 2010/11 | | FY 2011/12 | | FY 2012/13 (Projected) | |
| | Personnel Services | OE&E | Personnel Services | OE&E | Personnel Services | OE&E | Personnel Services | OE&E |
| Enforcement | N/A | N/A | $291,364 | $142,797 | $2,094,341 | $286,751 | $2,498,486 | $780,482 |
| Examination | N/A | N/A | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Licensing | N/A | N/A | $374,611 | $183,596 | $589,033 | $80,649 | $661,364 | $206,598 |
| Administration * | N/A | N/A | $541,104 | $265,194 | $981,722 | $134,414 | $1,469,698 | $459,107 |
| DCA Pro Rata | N/A | N/A | 0 | 1,590,529 | 0 | 1,497,999 | 0 | 1,770,677 |
| Diversion (if applicable) | N/A | N/A | 0 | 0 | 0 | 0 | 0 | 0 |
| **totals** | N/A | N/A | $1,207,079 | $2,182,116 | $3,665,096 | $3,343,857 | $4,629,548 | $3,216,864 |

* Administration includes costs for executive staff, bureau, administrative support, and fiscal services.

## Staffing Levels

BPPE's organizational structure currently includes an Enforcement Division comprised of a Compliance Unit; a Quality of Education unit; a Licensing Unit; an Administrative Unit which handles Student Tuition Recovery Fund (STRF) administration, school closures, compiling annual reports, outreach, human resources, budgets and fees, public records and transcripts; and a Complaints & Investigations/Discipline Unit.

The original Budget Change Proposal (BCP) to establish BPPE asked for 71 positions to support operation. The estimates came from workload based on that of the former BPPVE, despite the former BPPVE consistently being criticized for insufficient staff to meet the needs of the Bureau's workload. Once the budget was signed in October 2010, BPPE was only allocated 63 positions. In FY 2011-12, authorized staff positions were further reduced to 57 as a result of statewide mandatory staffing reductions and the Bureau was further hindered from hiring staff due to a mandatory hiring freeze imposed by Governor's Executive Order B-3-11.

Between January 2010 and January 2011, BPPE staffing levels ranged from 5 – 13 individuals. In 2011 staffing slowly increased, and by December 2011 the staffing level was at 49.
A FY 2013-14Spring Finance Letter established the 8.0 three year limited-term positions.
to address the significant backlog of licensing applications the Bureau is processing. The BPPE's current BCP for the 2014-15 budget requests 11 additional positions to handle the ongoing workload associated with processing and investigating complaints.

## Licensing

The Bureau has oversight of all the non-exempt, private postsecondary institutions located in California. AB 48 contained numerous exemptions to state-level oversight, the most notable of which is an exemption from BPPE authority and regulation under the Act granted to for-profit and nonprofit *regionally* accredited institutions. Students attending institutions that are accredited by a regional accrediting agency other than the Western Association of Schools and Colleges (WASC), which is one of the six regional accrediting bodies recognized by the U.S. Department of Education (USDE), are currently eligible for very limited tuition recovery assistance in the event of a school closure, but are not eligible for any other consumer protections provided under the Act.

The following are also exempt from licensure by BPPE:

- An institution that offers solely avocational or recreational educational programs.

- An institution offering educational programs sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.

- A postsecondary educational institution established, operated, and governed by the federal government or by this state or its political subdivisions.

- An institution offering either test preparation for examinations required for admission to a postsecondary educational institution or continuing education or license examination preparation, if the institution or the program is approved, certified, or sponsored by a government agency, other than the Bureau, that licenses persons in a particular profession, occupation, trade, or career field, a state-recognized professional licensing body, such as the State Bar of California, that licenses persons in a particular profession, occupation, trade, or career field or a bona fide trade, business, or professional organization

- An institution owned, controlled, and operated and maintained by a religious organization lawfully operating as a nonprofit religious corporation whose instruction is limited to the principles of that religious organization and the diploma or degree granted is limited to evidence of completion of that education. The institution is only eligible to offer degrees and diplomas in the beliefs and practices of the church, religious denomination, or religious organization and shall not award degrees in any area of physical science. Any degree or diploma granted by an institution owned, controlled, and operated and maintained by a religious organization lawfully operating as a nonprofit religious corporation shall contain on its face, in the written description of the title of the degree being conferred, a reference to the theological or religious aspect of the degree's subject area. The degree must reflect the nature of the degree title, such as "associate of religious studies," "bachelor of religious studies," "master of divinity," or "doctor of divinity."

- An institution that does not award degrees and that solely provides educational programs for total charges of two thousand five hundred dollars ($2,500) or less when no part of the total charges is paid from state or federal student financial aid programs.

- A law school that is accredited by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association or a law school or law study program that is subject to the approval, regulation, and oversight of the Committee of Bar Examiners.

- A nonprofit public benefit corporation that is qualified under Section 501(c)(3) of the United States Internal Revenue Code, is organized specifically to provide workforce development or rehabilitation services and is accredited by an accrediting organization for workforce development or rehabilitation services recognized by the Department of Rehabilitation.

- An institution that is accredited by the Accrediting Commission for Senior Colleges (ACSC) and Universities, Western Association of Schools and Colleges (WASC), or the Accrediting Commission for Community and Junior Colleges (ACCJC).

- An institution that has been accredited, for at least 10 years, by an accrediting agency that is: recognized by the United States Department of Education (USDE); has operated continuously in this state for at least 25 years and has not filed for bankruptcy protection pursuant to Title 11 of the United States Code during its existence; has a cohort default rate on guaranteed student loans does not exceed 10 percent for the most recent three years, as published by the DOE; maintains a composite score of 1.5 or greater on its equity, primary reserve, and net income ratios, as provided under Section 668.172 of Title 34 of the Code of Federal Regulations;

provides a pro rata refund of unearned institutional charges to students who complete 75 percent or less of the period of attendance; provides to all students the right to cancel the enrollment agreement and obtain a refund of charges paid through attendance at the second class session, or the 14th day after enrollment, whichever is later; submits to the Bureau copies of its most recent IRS Form 990, the institution's Integrated Postsecondary Education Data System Report of the USDE, and its accumulated default rate; and is incorporated and lawfully operates as a nonprofit public benefit corporation and is not managed or administered by an entity for profit.

- Flight instruction providers or programs that provide flight instruction pursuant to Federal Aviation Administration (FAA) regulations and do not require students to enter into written or oral contracts of indebtedness and do not require prepayment of instruction-related costs in excess of $2,500.

- An institution that is accredited by a regional accrediting agency, recognized by DOE, other than WASC, so long as the institution complies with requirements related to student tuition recovery.

For the 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 additional of an educational program. The licensing process begins with an application submitted to BPPE which requires a significant amount of information as outlined in Title 5 of the California Code of Regulations, Sections 71100-71380. Among other items, 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.

BPPE verifies information provided by applicants by requiring documentation be provided for each section of the application. BPPE states that all applications receive a 30-day initial application review and a notification is sent if the application is incomplete. For all new applications, BPPE staff perform what the Bureau calls a database review of all owners listed on an application to determine whether they have owned institutions before and whether they were ever subject to disciplinary action. Staff will also verify that financial data submitted was overseen by a Certified Public Accountant (CPA), as well as does Internet searches to determine if the applicant institution is operating or has operated in another state. Renewal of schools' approval occurs every five years. In addition, institutions are reviewed when changes occur that require an application, such as change of ownership or program offerings. Schools are also reviewed through the compliance process and may be investigated if the Bureau becomes aware of a violation.

As reported in its Sunset Review Report to this Committee, as of June 30, 2013, the Bureau had approved 1,960 institutional locations throughout California, including 1,107 main campus locations, 340 branch locations, and 513 satellite locations.

| Total Number of Approved Institutions | | | | | |
|---|---|---|---|---|---|
| | | Jan 2010 To Jul 2010** | FY 2010/11** | FY 2011/12** | FY 2012/13 |
| Main Location | Active | N/A | N/A | N/A | 954 |
| | Active Referred to Specialist* | N/A | N/A | N/A | 153 |
| Branch Locations | Active | N/A | N/A | N/A | 338 |
| | Active Referred to Specialist | N/A | N/A | N/A | 2 |
| Satellite Locations | Active | N/A | N/A | N/A | 512 |
| | Active Referred to Specialist | N/A | N/A | N/A | 1 |

BPPE processes the following applications:

- Addition of a Separate Branch
- Approval to Operate an Institution Non-Accredited
- Approval to Operate an Accredited Institution
- Change of Business Organization/Control/Ownership
- Change of Educational Objective
- Change of Location
- Change in Method of Instructional Delivery
- Change of Name
- Renewal for Approval to Operate an Institution Non-Accredited
- Renewal for Approval to Operate an Accredited Institution
- Verification of Exempt Status

BPPE has established performance targets for its licensing program in the Strategic Plan. Specifically the objective outlined in the Strategic Plan is for a review and streamlining of the application processes to eliminate backlog and achieve a 30-day initial application review and response by July 1, 2014 and a secondary review and response within 60 days of receipt of a complete application by January 1, 2015. According to BPPE in its Sunset Review Report, it is currently able to meet the expectation that completed applications will be reviewed within 60 days for eight of the 12 application types currently processed by the Bureau, however, considerable backlogs remain and are discussed further in this report.

| Application Timelines | | | | |
|---|---|---|---|---|
| | January 2010 to July 2010 | FY 2010/11 | FY 2011/12 | FY 2012/13 |
| **Approval to operate an institution non-accredited** | | | | |
| Received | 40 | 163 | 106 | 93 |
| Approved | 3 | 42 | 70 | 39 |
| Average Days | 44 | 231 | 350 | 405 |
| Denied | 0 | 1 | 6 | 12 |
| Average Days | 0 | 311 | 520 | 653 |
| Closed | 0 | 2 | 7 | 14 |

| | | | | |
|---|---|---|---|---|
| Average Days | 0 | 28 | 260 | 766 |
| Under Review | 4 | 55 | 56 | 53 |
| Pending Review | 0 | 0 | 15 | 28 |
| **Approval to operate an accredited institution** | | | | |
| Received | 159 | 136 | 130 | 83 |
| Approved | 28 | 157 | 142 | 55 |
| Average Days | 54 | 245 | 144 | 105 |
| Denied | 0 | 1 | 2 | 0 |
| Average Days | 0 | 282 | 198 | 0 |
| Closed | 2 | 11 | 40 | 18 |
| Average Days | 81 | 236 | 163 | 311 |
| Under Review | 0 | 7 | 5 | 41 |
| Pending Review | 0 | 0 | 0 | 0 |
| **Renewal to operate an institution non-accredited** | | | | |
| Received | 9 | 62 | 203 | 144 |
| Approved | 2 | 2 | 28 | 23 |
| Average Days | 33 | 223 | 293 | 474 |
| Denied | 0 | 0 | 2 | 11 |
| Average Days | 0 | 0 | 384 | 460 |
| Closed | 0 | 2 | 3 | 6 |
| Average Days | 0 | 99 | 229 | 453 |
| Under Review | 2 | 27 | 79 | 16 |
| Pending Review | 0 | 0 | 88 | 128 |
| **Renewal of approval to operate an accredited institution** | | | | |
| Received | 11 | 30 | 98 | 134 |
| Approved | 0 | 3 | 36 | 95 |
| Average Days | 0 | 95 | 82 | 103 |
| Denied | 0 | 0 | 0 | 2 |
| Average Days | 0 | 0 | 0 | 257 |
| Closed | 1 | 21 | 32 | 26 |
| Average Days | 15 | 167 | 109 | 201 |
| Under Review | 0 | 0 | 10 | 50 |
| Pending Review | 0 | 0 | 0 | 0 |
| **Application for changes** | | | | |
| Received | 133 | 552 | 519 | 519 |
| Approved | 43 | 296 | 462 | 414 |
| Average Days | 33 | 94 | 122 | 126 |
| Denied | 0 | 4 | 10 | 18 |
| Average Days | 0 | 31 | 231 | 425 |
| Closed | 2 | 40 | 36 | 57 |
| Average Days | 10 | 150 | 219 | 389 |
| Under Review | 6 | 45 | 74 | 142 |

| | | | | |
|---|---|---|---|---|
| Pending Review | 0 | 0 | 12 | 71 |
| **Verification of exemption** | | | | |
| Received | 83 | 221 | 161 | 173 |
| Approved | 7 | 78 | 150 | 72 |
| Average Days | 37 | 263 | 250 | 225 |
| Denied | 1 | 20 | 66 | 40 |
| Average Days | 21 | 260 | 374 | 198 |
| Closed | 1 | 7 | 34 | 11 |
| Average Days | 21 | 173 | 135 | 344 |
| Under Review | 3 | 21 | 22 | 12 |
| Pending Review | 0 | 0 | 0 | 92 |

## Enforcement

BPPE is generally responsible for protecting consumers and students against fraud, misrepresentation, or other business practices at private postsecondary institutions that may lead to loss of students' tuition and related educational funds; 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 for all students in all types of private postsecondary educational and vocational institutions.

Among the oversight activities carried out by BPPE to ensure that covered institutions operate in accordance with the law, the Bureau requires institutions to submit an Annual Report as a part of the ongoing compliance program. The Annual Report is due by September 1 of each year, and is required to include specific information related to the educational programs offered by the institution in the reporting period. BPPE notifies institutions of this requirement through the Bureau's email subscription list, a hard copy flyer, posting on the Bureau's website, and reminder notices posted to the Bureau's Facebook and Twitter pages. The information and data element portions of the Annual Report are submitted by the institution to the Bureau electronically, via a link on the Bureau's website. The required supplementary documents are mailed to the Bureau in hard copy (financial documents) and electronic (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.

BPPE is also responsible for responding to and helping to resolve student complaints. As stated in its Sunset Review Report, BPPE accepts complaints from any individual who has cause to believe that an institution has violated the Act. Complaints are received via telephone, mail and email. Upon receipt, complaints are assigned for further review to desk investigators and field investigators. BPPE may also utilize DCA's Division of Investigation (DOI) for complaints that require undercover investigations or the presence of a sworn officer. To ensure proper training of staff, all BPPE investigators attend the DCA Enforcement Academy. In addition, the Bureau has worked with the Office of the Attorney General (AG) to enhance complaint processing, including information about collecting evidence.

BPPE states that complaints are prioritized according to the following:

- Urgent, which constitutes the highest priority for complaints where there is immediate danger to the public health, safety or welfare and may include negligence or incompetence.

- High priority in which there is significant financial harm or unlicensed activity that does not pose immediate danger to the public.

- Routine complaints related to advertising or non-compliance with a citation.

In 2010, DCA developed enforcement performance measures for various licensing programs. DCA established a goal that consumer complaint should be completed in a 12 to 18 month cycle. BPPE uses DCA's model as its goal in resolving consumer complaints. According to BPPE, it is currently averaging 196 days to complete consumer complaints. The Unit is still investigating 800 open complaints.

BPPE states that it is currently implementing a case review process with the analysts to review cases that are over 90 days old on a monthly basis. During the case review the analyst is provided with instruction and clarification on how to move forward with the case and given a target completion date. BPPE states that it is also implementing a new complaint intake process aimed at reducing the number of complaints received without any supporting documentation. According to BPPE, the complainant will receive an letter acknowledging that a complaint has been received and may also contain an additional request for supporting documents, including a date by which the individual has to send supporting documents. According to BPPE, if the necessary information is not received by the assigned date, the complaint will be closed.

The Bureau has established an unlicensed activity unit within its Complaint Investigations Enforcement Division that addresses all unlicensed activity. According to a recent BSA report, BPPE usually identifies unlicensed institutions when it receives complaints from the public, or is notified by staff working in other units, or from staff who saw or heard school advertisements on television or radio. Institutions that are found operating without BPPE approval, that otherwise should have obtained approval, are issued an order of abatement and cease and desist letter. For institutions that do not comply with the letter, BPPE has the authority to issue a citation, not to exceed $50,000, for not having proper approval to operate a private postsecondary institution.

The Act requires BPPE to perform compliance inspections for regulated institutions, including announced and unannounced inspections every two years, which used to consist of a desk review by BPPE staff (according to BPPE, this process has changed recently) as well as on-site inspections. BPPE conducted its first compliance inspection in November 2011. During compliance inspections, institutional catalogs and enrollment agreements are reviewed to ensure all required disclosures are contained and that the documents do not contain any policies that violate the Act and regulations. Advertisements are reviewed to ensure students are not misled. Institutional websites are reviewed to ensure proper and accurate disclosures. Institutional facilities are inspected to ensure they are well maintained and have the necessary equipment to educate students, have all the proper permits, and that required records are properly stored. Student files are inspected to ensure admission requirements are being met, and that all required documentation is maintained within the student files. Faculty and administration files are inspected to ensure minimum standards are met. Student surveys are conducted and administration staff and/or faculty are interviewed to ensure policies are being followed. Compliance inspectors are trained to look for minor violations (those technical in nature) and material/major violations (those that have the potential to cause student harm) during compliance inspections.

When minor violations are identified the institution is issued a Notice to Comply (NTC). Each minor violation is discussed in detail with the institution and the institution is informed that they have 30 days to submit documentation showing compliance has been achieved. If the Bureau receives evidence of compliance within 30 days, no further action is taken. If an institution fails to obtain compliance within 30 days, the Compliance Unit refers the case to the Discipline Unit. NTCs are posted to the Bureau's website.

When material/major violations are identified by a compliance inspector, the violation is discussed with the institution and the institution is informed that a report, detailing the violation and any relevant evidence, will be referred to the Enforcement Unit and/or Quality of Education Unit for further investigation and possible additional action.

**STRF**

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. Institutions are required to charge students fifty cents ($.50) per one thousand dollars ($1,000) of institutional charges, rounded to the nearest thousand dollars which the institution then submits to BPPE as payment into the STRF. The Act leaves the bulk of STRF rules and administration to the regulatory process via regulations promulgated by the Bureau, but clearly 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 Bureau 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.

# RECENT LEGISLATIVE HISTORY, ACTION AND AUDITS

BPPE was established in 2010 following the passage of AB 48. Since then, there have been a number of actions by the Legislature that amend the Act and impact BPPE's operations. There have also been outside reports issued by the Legislative Analyst Office (LAO) and Bureau of State Audits (BSA) pursuant to requirements for review contained within the Act.

**Legislation**

- SB 71 (Committee on Budget and Fiscal Review, Chapter 28, Statutes of 2013) enacted various budget-related items, including a provision allowing exempt institutions to voluntarily seek operating approval from the Bureau. The bill provided a temporary delay in those institutions reporting certain information on the Student Performance Fact Sheet.

- SB 308 (Lieu, Chapter 333, Statutes of 2013) granted statutory authority to the Board of Barbering and Cosmetology to remove its approval of a school, which in turn authorizes BPPE to take action for offering a training program to students who will not be eligible to sit for licensure, aimed at streamlining the process to close down bad barbering and cosmetology schools.

- SB 1289 (Corbett, Chapter 623, Statutes of 2012) required higher education institutions to disclose certain student loan information in appropriate online and printed financial aid materials.

- SB 122 (Price, Chapter 789, Statutes of 2012) granted complete authority over the approval of nursing schools to the Board of Registered Nursing rather than the prior process which included BPPE approval.

- AB 2296 (Block, Chapter 585, Statutes of 2012) required institutions regulated by BPPE to provide additional disclosures to prospective students on their website, in published materials, and in a Student Performance Fact Sheet.

- SB 619 (Fuller, Chapter 309, Statutes of 2011) exempted flight instructors and flight schools that do not require students to enter into contracts of indebtedness and will not require prepayment of fees in excess of $2,500 from regulation by the Act and BPPE.

- AB 611 (Gordon, Chapter 103, Statutes of 2011) prohibited a private postsecondary institution from offering an unaccredited doctoral degree program without making certain disclosures to students prior to enrollment.

- AB 1013 (Committee. on Higher Education, Chapter 167, Statutes of 2011) authorized the BPPE to publish its own list of acceptable ability-to-benefit examinations if the U.S. Department of Education does not have a list of relevant examinations that pertain to the intended occupational training. The bill also required a refund to be paid by the first class session or within seven days of enrollment, as opposed to seven class days.

- SB 123 (Liu, Chapter 32, Statutes of 2009) recasted the California Career Resource Network, a stand-alone state agency composed of representatives from various state agencies, including the Bureau, as the California Career Resource Network Program, within the Department of Education.

**Regulations**

- Citations and Fines; Annual Reports; Emergency Decisions 8/5/11 (Adopted 9/19/11, Effective 10/19/11). This package contained regulations for the issuance of citations and assessment of fines, the format and requirements for the Institutional Annual Report and School Performance Fact Sheet and regulations for issuing emergency decisions.

- Notice to Comply & Disciplinary Guidelines 7/9/2010 (Adopted 3/28/2011, Effective 4/27/2011). This package implemented the requirements for the Notice to Comply and the associated appeals process, as well as outlined disciplinary guidelines.

- Student Tuition Recovery Fund (STRF) 11/16/2010 (Adopted 4/12/2011, Effective 4/12/2011). The STRF regulations describe how STRF is collected and how STRF claims are submitted and paid.

- Applications, Operating Standards & STRF 4/23/2010 (Adopted in part 11/18/2010, Effective 11/18/2010). This package made the Emergency Regulations permanent and included all of the

same information as contained in the original Emergency Regulations package other than the STRF.

- Emergency Regulations: Applications, Operating Standards & STRF 2/1/2010. This package was an Emergency Regulation Package that included Minimum Operating Standards, Applications and application processing, general provisions, and regulations for the STRF.

# CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to BPPE, or areas of concern for the Committees to consider, along with background information concerning the issue of oversight for private postsecondary institutions. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The BPPE and other interested parties, including institutions and student advocates, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

## ***REGULATION OF PRIVATE POSTSECONDARY INSTITUTIONS***

**Recognizing the Need for Oversight**

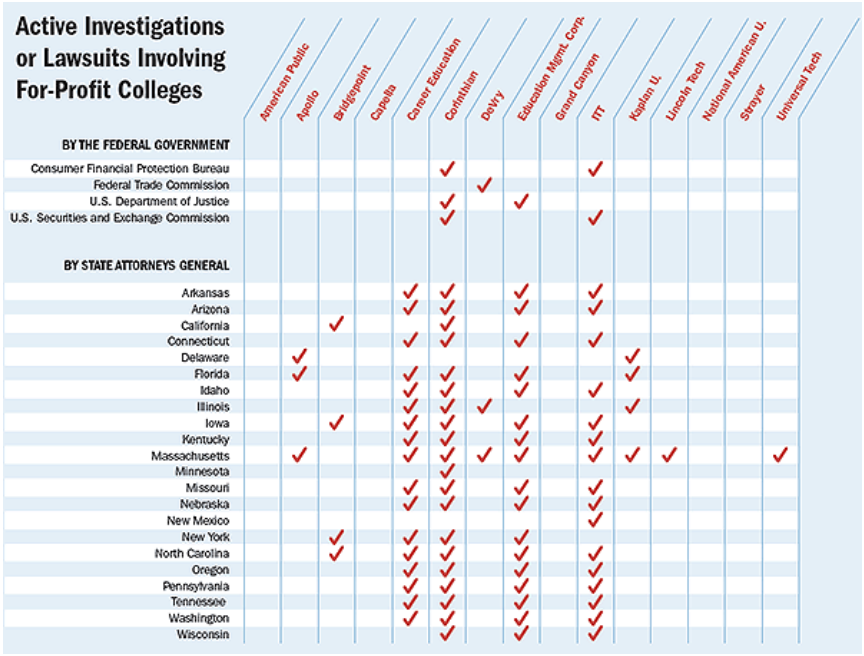
At a time when California's public institutions have reduced enrollments due to major budget cuts, for-profit higher education institutions are in a position to play a role in providing access and education for otherwise underserved students. The challenge for the Legislature is to establish an oversight structure that supports innovative programs but prevents predatory practices.

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 publics and nonprofits and 5.7 percent higher than for community colleges. Student satisfaction information shows for-profit students are less likely to believe their education was worth the price paid. While NEBR 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, NEBR 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.

While evidence of dishonesty in marketing, high student debt and low completion rates, and general questions surrounding quality have focused the vast majority of state and federal conversations regarding the sector on regulatory oversight, the industry argues against painting all schools with the same brush and that there are high-quality programs offered at many for-profit institutions.

Attorneys General in a number of states, including California, are currently investigating or have complaints pending against for-profit institutions, as outlined below.




Source: Chronicle of Higher Education article Government Investigations and Suits Against For-Profit Colleges: the Grid

## Defining Private Postsecondary Education

State law broadly defines private postsecondary education to include private entities with a physical presence in California that are offering formal postsecondary academic, vocational, or continuing professional education programs to the public for a charge. Among the thousands of institutions falling under this definition, however, there are significant differences in institutional missions and corporate organization, the types of students served and the programs offered, and the quality of education and opportunities provided for graduates. While there are numerous options for categorizing private institutions, California has historically looked to for-profit/nonprofit distinctions and accreditation status as means for determining regulation for institutions.

Accreditation is a voluntary, non-governmental peer review process used to determine academic quality. Under federal law, the United States Department of Education (USDE) establishes the general standards for accreditation agencies and is required to publish a list of recognized accrediting agencies that are deemed reliable authorities on the quality of education provided by their accredited institutions. While accredited and unaccredited education and training programs are allowed to operate in California, only accredited institutions are authorized to participate in federal and state financial aid programs.

*Unaccredited Institutions*: There are likely thousands of unaccredited for-profit and nonprofit private postsecondary institutions operating throughout the country. These institutions are not eligible to

participate in state or federal student financial aid programs and are, therefore, not regulated by the federal government. Oversight of unaccredited institutions is solely the responsibility of states. BPPE maintains responsibility for oversight of unaccredited institutions in California. It is unclear exactly how many unaccredited institutions are operating in California, as BPPE does not currently track accreditation status of approved institutions. Estimates based on the limited available information would put the number of unaccredited schools in California somewhere around 1000. It is also unclear as to the number of institutions offering *unaccredited degrees* and the number that are providing *career technical training or vocational certificate programs.*

*Accredited institutions:* Accredited institutions are somewhat easier to track as many of these institutions participate in federal and/or state financial aid programs. Accredited institutions include both nonprofit and for-profit education and training programs.

*Accredited nonprofit institutions* are commonly referred to as independent institutions and are recognized in California law as a segment of California higher education, alongside public institutions. Independent institutions are defined in the Education Code as private institutions "that grant undergraduate degrees, graduate degrees, or both, and that are formed as nonprofit corporations in this state and are accredited by an agency recognized by USDE." Historically, many independent institutions have been exempt from state-level regulation. Nonprofit institutions that are unaccredited do not fall within the definition of "independent institutions" and have generally been regulated by the state.

*Accredited for-profit institutions*, also commonly referred to as proprietary colleges or for-profit colleges, include academic and vocational institutions of postsecondary education that are privately owned or owned by a publicly traded company and whose net earnings can benefit a shareholder or individual. Prior to the declines seen recently in new student enrollments at many for-profit colleges, largely due to new federal regulations and a slowing economy, there had been tremendous growth in the number of students attending, and the amount of public financial aid funds directed to for-profit education and training programs. Between 2004 and 2009, according to the USDE, the number of students attending accredited for-profit institutions increased by over 88 percent nationwide; with the sector serving approximately 2.2 million students in 2009. According to the GAO, during the 2009-2010 academic year, for-profit colleges received almost $32 billion in grants and loans provided to students under federal student aid programs. Additionally, of the $4.4 billion awarded between 2009 and 2011 in federal veteran students' benefits, 37 percent went to for-profit colleges, which enrolled about 25 percent of students. In California, an estimated $93.3 million was paid to Cal Grant recipients attending for-profit institutions in 2009-10.

There are two different types of accreditation:

*Regional Accreditation*: There are six USDE-recognized regional accrediting agencies. Each regional accreditor encompasses public and the vast majority of non-profit private (independent) postsecondary educational institutions in the region it serves. California's regional accrediting agency is the Western Association of Schools and Colleges (WASC). There are a handful of WASC-accredited for-profit private institutions operating in California. Many regionally accredited for-profit institutions have main campuses in other parts of the country and are, therefore, accredited by one of the other five regional accreditors.

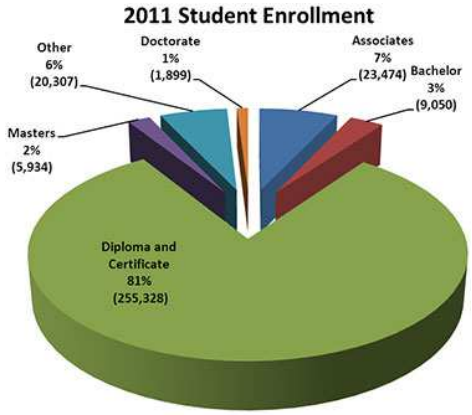
*National Accreditation*: National accreditation is not based on geography, but more focused to evaluate specific types of schools and colleges. For example, the Accrediting Commission of

Career Schools and Colleges examines career-focused programs. The Distance Education and Training Council accredits colleges that offer distance education. The idea behind national accreditation is to allow nontraditional colleges (trade schools, religious schools, certain online schools) to be compared against similarly designed institutions. Different standards and categories are measured, depending on the type of school in question.

While accreditation remains a primary method for evaluating and assuring educational quality, concerns regarding the disparate quality and reliability of USDE-approved accrediting agencies have led the USDE advisory committee on accreditation to look at changes to the role of accreditation. Potential changes include structuring accreditation based on institution type or mission rather than geography so that accreditors can more easily distinguish between colleges of varying quality, and defining a common set of data such as licensure, job placement, and completion rates that the federal government would collect and share with accreditors to minimize institutional reporting and ensure consistency. Further, while accreditation can be used as a measure of program quality, consumer protections fall outside of the scope of accreditation. States are responsible for enacting laws that protect students against fraud and abuse.

## A Snapshot of Schools Operating in California

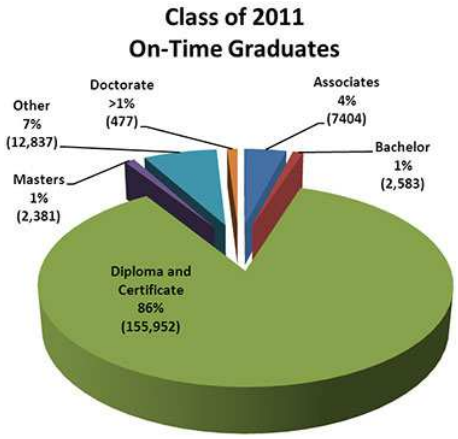
1,135 institutions were required to submit a 2011 Annual Report to the Bureau. Of these institutions, 864 submitted Annual Reports prior to the deadline. For the institutions that submitted within the Bureau's deadlines, BPPE was able to draw some conclusions about the sector. The information contained in the Annual Reports and in this summary is based on self-reported data from reporting institutions; the information has not been independently verified by the Bureau.




In 2011, for the 864 institutions that submitted an online Annual Report prior to the deadline, these institutions were serving a combined 315,992 students. The vast majority (255,328) of these students were enrolled in diploma and/or certificate programs. The types of diplomas and certificate programs offered by these institutions run the gamut, and include such programs as Cosmetology, Vocational Nursing, Truck Driving, and Computer Training. In 2011, three percent of students were enrolled in bachelors programs, and a combined three percent were enrolled in graduate-level degree programs.

For the 864 institutions that submitted an online Annual Report prior to the 2011 BPPE deadline, the institutions reported a combined 181,634 students graduating on-time. An estimated 86 percent of those students received diplomas and certificates. Associates degrees were granted to approximately 4

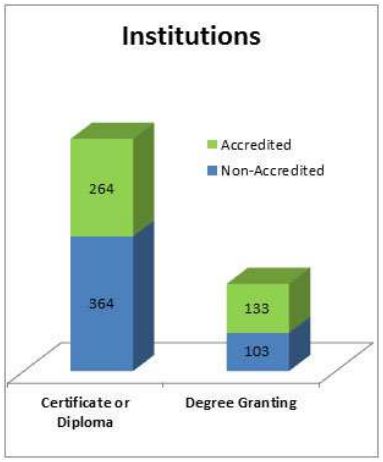
percent of students and one percent of students received a baccalaureate degree. Graduate-level degrees were awarded to just fewer than two percent of the 2011 graduating students.



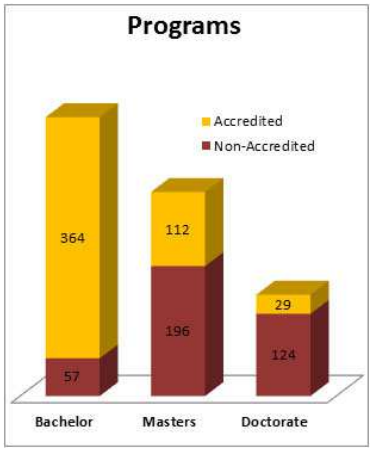

The reported data allowed BPPE to calculate the percentage of students who graduated their program on-time, organized by the degree offered:

| Diploma/Degree | Enrolled Students | Graduates | Completion Rate |
|---|---|---|---|
| Diploma/Certificate | 255,328 | 155,952 | 62% |
| Associates | 23,474 | 7,404 | 32% |
| Bachelors | 9,050 | 2,583 | 29% |
| Masters | 5,934 | 2,381 | 40% |
| Doctorate | 1,899 | 477 | 25% |
| Other | 20,307 | 12,837 | 63% |

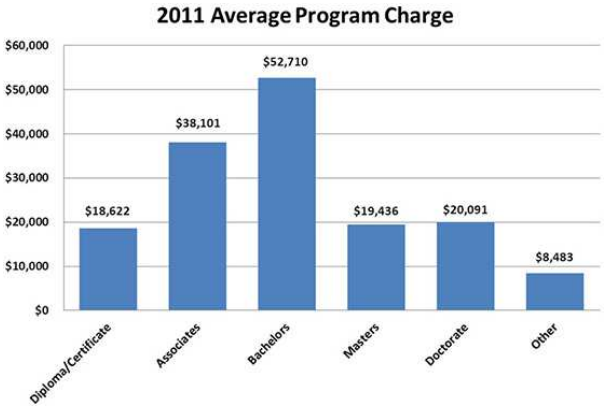
The following chart shows Bureau-approved 2011 Annual Reporting institutions broken down by certificate/diploma versus degree and separated by accredited and non-accredited. There were 397 (46%) institutions accredited through an accrediting agency recognized by USDE. Of the 397 accredited institutions, 264 were issuing certificates or diplomas and 133 institutions are degree-granting. As shown, 467 unaccredited institutions filed a 2011 Annual Report, and 103 of these institutions were issuing degrees at an Associate's Degree level or higher.




As show in the chart below, as reported to BPPE in 2011, 133 accredited institutions were offering a combined 364 baccalaureate degree programs, 112 master's degree programs, and 29 doctorate programs. The 103 unaccredited degree-granting institutions were offering 57 baccalaureate degree programs, 196 masters programs and 124 doctorate programs.




Based on the information contained in the 2011 Annual Reports, BPPE was able to determine the average program costs of the reporting institutions. The chart below shows the average total charges of programs offered by reporting Bureau-approved institutions.



New to the 2011 Annual Report, BPPE collected information regarding institutional participation in financial aid programs. According to reported data, 324 Bureau-approved institutions participated in Federal Title IV Financial Aid Programs, 318 participated in Federal veteran's financial aid programs, and 66 participated in California aid programs.

## ***BPPE ADMINISTRATION ISSUES***

**ISSUE #1: (CURRENT STAFFING AND ALLOCATION OF RESOURCES ARE INADEQUATE.) The Bureau faces significant delays in the time it takes to process applications for approval, close complaints, process STRF payments and perform compliance inspections; yet, it has a healthy reserve in its fund. The Bureau currently has a large licensing backlog as it works to review applications for approval. The Bureau may also face increased workload challenges if a number of currently exempt institutions choose to come under the Bureau's oversight to maintain eligibility for Title IV funds. The Bureau has also faced staffing shortages due to Budget delays, hiring freezes and other challenges but does not appear to have a plan for eliminating backlogs. What are the Bureau's current staffing needs? How will the Bureau clear its backlogs? Does the Bureau have the necessary staff numbers and positions to fulfill its mission?**

**Background:** BPPE has struggled since its inception to perform all of the required functions outlined in the Act and accompanying regulations. While the Act became effective on January 1, 2010, it was not until passage of the 2010-11 Budget Act, on October 8, 2010, that BPPE was appropriated any funding to support its operations, yet BPPE reports that institutions began submitting applications as early as February 2010. BPPE currently experiences significant delays in processing in every one of its programs.

At its December 2013 Advisory Committee meeting, the Bureau reported 1,063 applications pending, 319 of which were still pending assignment for initial review. According to information in the BSA report, BPPE spent an average of 185 days to process the 3,174 applications that it received and closed FY 2009–10 through FY 2012–13.

For the Licensing Unit, BPPE attributes delays to the length of time it takes to review applications in three primary areas: initial approval of a non-accredited institution, change in educational objective application and renewal of approval of a non-accredited institution. According to BBPE, analyzing the curriculum entails locating and interviewing a subject matter expert or having an education specialist do extensive research in the subject matter area. According to BPPE, besides challenges related to staffing, there are other factors that contribute to long application processing times like "the complexity of the law and the time it takes to evaluate specific subject areas in order to grant an approval to operate." BPPE has the statutory authority to consult visiting committees to assist in reviewing educational programs but, as outlined in the BSA report, the Bureau has only done this four times since 2010. Staff is required to perform a comprehensive review of programs prior to approval which BPPE states takes a long amount of time considering that an education specialist or analyst must examine the curriculum for compliance with the objectives of the program. BPPE also asserts that the number of applications from new schools and existing schools needing to make changes has far exceeded original estimates by about 30 percent. The Bureau never anticipated the need for staffing for the high volume of workload it has which has greatly contributed to its inability to review

applications in a timely manner. In addition, the Bureau underestimated the amount of time necessary to thoroughly process an application.

According to BPPE, it is currently taking about six months to *review* an application for a new school. BPPE is most easily able to process applications for institutions that are accredited, since accrediting bodies typically complete at least one site visit of the institution and review the educational programs prior to granting accreditation. However, even accredited institutions currently exempt from BPPE oversight, that have chosen to voluntarily come under the Bureau for purposes of remaining Title IV eligible, have experienced significant delays in the time it takes for staff to process applications. BPPE noted in its Sunset Review Report to the Committees, that even more institutions are expected to choose this pathway for remaining eligible, but the Bureau will need more staff to address this anticipated workload. The Bureau was granted an additional 8 limited term, three-year positions in last year's budget specifically to address licensing backlogs.

BPPE also faces significant delays in the time is takes to process complaints and take action against institutions. According to information presented at the December 2013 Advisory Committee meeting, from July 2013 through November 2013, BPPE received 210 complaints, closed 131, still had 800 pending (pending complaints include open complaints from the public and also investigations which result from internal referrals such as when the Licensing Unit identifies a possible material violation of law when a major problem is discovered during a compliance inspection), issued citations for 2, referred 9 for further discipline and had 23 pending at the AG. The Bureau states that "the process for complaints and the staff are new, so the process has taken some time to be adopted and implemented. In addition, some cases are necessarily more complex and time consuming." A number of complaints the Bureau receives have to do with individuals operating institutions without approval and the BSA report found that there were still 160 outstanding complaints of the 438 received related to unlicensed activity. BSA also noted that since 2010, BPPE has issued 14 citations to unlicensed institutions with administrative fines totaling $700,000, but has only collected $5,000 from one of the institutions. BSA also reported that the Bureau takes almost 300 days to complete a compliance inspection of a licensed institution. BSA highlighted redundancies in the inspection process such as a requirement that the same information be reviewed at a desk and on-site inspection.

**Staff Recommendation:** ***The Bureau should advise the Committees what steps it is taking to ensure that licensing backlogs are reduced and enforcement timelines are improved. The Bureau should also identify what additional staffing and resources are necessary to deal with these delays.***

## ISSUE #2: (OUTDATED TECHNOLOGY SYSTEMS AND THE IMPLEMENTATION OF BreEZe.) The Bureau uses a woefully outdated data system and it is unclear if the Bureau's unique needs have been identified by DCA as it plans to implement BreEZe for the Bureau in the future.

**Background:** The DCA is in the process of establishing a new integrated licensing and enforcement system, BreEZe, which would also allow for licensure and renewal to be submitted via the internet. BreEZe will replace the existing outdated legacy systems and multiple "work around" systems with an integrated solution based on updated technology. The goal is for BreEZe to provide DCA organizations with a solution for all applicant tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management capabilities. In addition to meeting these core DCA business requirements, BreEZe will improve the DCA's service to the public and connect all license types for

an individual licensee. BreEZe will be web-enabled, allowing licensees to complete applications, renewals, and process payments through the Internet. The public will also be able to file complaints, access complaint status, and check licensee information.

BPPE currently utilizes a different database than the majority of DCA entities that rely on the Consumer Affairs System (CAS). Schools Automated Information Link, or SAIL, is a flawed system to manage all of the data, licensing, complaints and enforcement tools necessary for BPPE to fulfill its mission and statutory mandates, as it is unable to manipulate data and does not track basic information like enforcement actions and timelines. According to the BSA report, BPPE does not systematically track information and further does not have sufficient data to monitor its activities in order to determine how to improve its performance.

BSA highlighted numerous instances where the inadequacies of SAIL prevent BPPE from having key information and performing key functions. As a result of SAIL, BPPE does not track the status of licensing applications it receives from institutions, does not track the amount of time it takes to complete announced inspections, is likely missing key information about action against unlicensed institutions and cannot track all complaint cases. BSA also found that SAIL hinders BPPE in its ability to properly track STRF remittance from institutions, as well as payment timelines to students and student complaint status. For example, while SAIL allows staff to record the STRF payments received, the system does not enable BPPE to track which institutions have not paid for all of the quarters of a calendar year. In terms of processing STRF complaints and payouts to students, SAIL only tracks when BPPE sends a letter to a student (often necessary to request additional documentation to process a claim), but it does not allow BPPE staff to subsequently input when the supporting materials are received. This issue of a lack of systems to properly administer STRF was previously raised in a 2002 internal DCA audit for the former BPPVE, yet it does not appear that there have been any data collection improvements or system enhancements since that time. SAIL also contains flawed files, such as the same complaint listed under two unique identifiers, as BSA found, and it is unclear how potentially problematic data will be reconciled to be part of a new, functional system when BreEZE is ultimately available to the Bureau.

While DCA has presented testimony and information to the Committees, that staff from all of the DCA's boards and bureaus have participated in development and testing of BreEZe and continue to do so, the BSA report included information from DCA's chief of enterprise project services that "a complete assessment of the Bureau's data needs will take place in spring of 2015", a full year from now and five years after the BPPE was reconstituted.

BPPE performs regulatory functions far different from those of the majority of DCA entities in its work to uphold student protections and maintain oversight for quality private postsecondary education programs in California. The Bureau also collects significant data on enrollment, graduation, license examination passage, placement and salaries and other key variables that can help guide policy makers on important initiatives regarding the future of higher education in this state and establishing performance metrics to ensure accountability of all higher education systems. The Bureau, despite having vast budget resources, does not appear to be receiving any support or assistance to properly collect information, track information, manipulate information while at the same time ensuring the reliability of the information it requires.

**Staff Recommendation:** ***The Bureau should provide an update of anticipated timelines, existing impediments and the current status of utilizing BreEZe, as well as any intermediate efforts underway intended to improve the Bureau's information collection and tracking systems.***

**ISSUE #3: (UNDERUTILIZED ADVISORY COMMITTEE.) By not maximizing the role of Advisory Committee members and their collective experience operating and dealing with institutions, the Bureau is missing key opportunities for guidance and assistance in implementing the Act.**

**Background:** AB 48 created an Advisory Committee comprised of 12 members with various backgrounds related to private postsecondary education. The Act mandates that the Committee advise the Bureau with respect to matters relating to private postsecondary education and the administration of the Act, including annually reviewing the fee schedule, licensing, and enforcement provisions. The Act also requires the Bureau to actively seek input from and consult with the Committee regarding the development of regulations to implement the law.

Despite the expertise of Advisory Committee members in issues such as the operation of institutions BPPE regulates, state and federal laws related to private postsecondary education and student protections, BPPE rarely consults Advisory Committee members and the Committee appears to have little impact on the priorities and operations of the Bureau. The Advisory Committee has only met once annually, following a series of meetings in 2010, while the initial regulatory packages establishing BPPE's authority were being developed, and it does not appear that comments and advice of Advisory Committee members is taken into account. The regulations governing much of BPPE's work are substantive and stem from a number of costly, lengthy processes, but suggested amendments to regulations from Advisory Committee members do not appear to be taken into consideration and may also not take into account public comments, considering the only limited opportunities for a very small number of public meetings offer.

While BPPE may lack staff to dedicate the time and resources necessary to conduct regular public meetings, the wide variety of institutions the Bureau regulates, coupled with the large number of students served at BPPE-approved institutions could benefit from public dialogue and outcomes resulting from regular public meetings. The Bureau struggles to prioritize its work and implement workable systems and processes for licensing, enforcement and student protections and may significantly benefit from drawing on the work experience and history of Committee members as it continues to move forward in organizing its operations and addressing the many issues it faces.

**Staff Recommendation:** ***The Bureau may consider consulting Advisory Committee members more frequently and provide additional opportunities for Advisory Committee meetings to better include public dialogue to assist the Bureau in its work enforcing the Act and also as a means of solving some of the operational problems the Bureau currently faces.***

## *BPPE BUDGET ISSUES*

**ISSUE #4: (INSUFFICIENT SPENDING AUTHORITY.) The Bureau currently has almost one year in its reserves, despite a provision in the Act prohibiting more than a six month reserve. Are fees too high, or is the Bureau not provided the spending authority it needs to effectively oversee schools and protect students in California?**

**Background:** The Act requires institutions to pay application fees and annual institutional fees to BPPE which are deposited in the Private Postsecondary Education Administration Fund.

| Fee Schedule and Revenue | | | | | | | |
|---|---|---|---|---|---|---|---|
| Fee | Current Fee Amount | Statutory Limit | FY 2009/10 Revenue | FY 2010/11 Revenue | FY 2011/12 Revenue | FY 2012/13 Revenue | % of Total Revenue |
| New Institution | $ 5,000 | $ 5,000 | $ - | $ 739,550 | $ 468,015 | $ 625,000 | 6% |
| New Branch - Non Accredited | $ 3,000 | $ 3,000 | $ - | $ 52,500 | $ 152,975 | $ 108,000 | 1% |
| New Branch - Accredited | $ 750 | $ 750 | $ - | $ 85,000 | $ 75,375 | $ 81,750 | 1% |
| Verification of Exemption | $ 250 | $ 250 | $ - | $ 60,750 | $ 40,250 | $ 51,000 | 1% |
| Change in Education Objective | $ 500 | $ 500 | $ 25,750 | $ 62,165 | $ 42,500 | $ 53,500 | 1% |
| Minor Change | $ 500 | $ 500 | $ 19,250 | $ 30,000 | $ 26,250 | $ 29,500 | 0% |
| Change in Location | $ 500 | $ 500 | $ - | $ 23,750 | $ 18,750 | $ 22,500 | 0% |
| Change of Name | $ 500 | $ 500 | $ 112,250 | $ 24,500 | $ 17,750 | $ 22,500 | 1% |
| Change in Approval - Accreditation | $ 250 | $ 250 | $ 93,420 | $ 32,000 | $ 40,000 | $ 36,500 | 1% |
| Change in Method | $ 500 | $ 500 | $ 110,000 | $ 6,500 | $ 70,000 | $ 7,500 | 1% |
| Renewal - Main Campus | $ 3,500 | $ 3,500 | $ 14,000 | $ 242,350 | $ 752,750 | $ 770,000 | 6% |
| Renewal - Branch | $ 3,000 | $ 3,000 | $ - | $ 30,000 | $ 24,000 | $ 75,000 | 0% |
| Renewal - Accredited | $ 500 | $ 500 | $ 11,500 | $ 21,750 | $ 61,500 | $ 62,500 | 1% |
| Annual Institution Fee | up to $25,000 | up to $25,000 | $ - | $ 6,848,954 | $ 8,531,189 | $ 8,272,000 | 80% |
| Annual Branch Fee | $ 1,000 | $ 1,000 | $ - | $ 3,000 | $ 27,149 | $ 306,000 | 1% |

The fees collected from BPPE have left it with a current reserve of 11.5 months. This large amount of unallocated money is troubling on a number of fronts, most particularly to the students who suffer when BPPE is not able to fulfill its mission and provide critical oversight of private postsecondary institutions, but also the institutions themselves, many of which are paying fees in a timely manner and subsequently not receiving any consistent and proper regulation. The former BPPVE was consistently insolvent and its fee schedule was questioned in numerous reports and audits. Fees were set in AB 48 to attempt to prevent history from repeating itself and arm the Bureau with the financial resources necessary to do its job. However, while it was authorized to operate in January 2010, BPPE had to wait until October of that year for any spending authority. Even at that point, the Bureau was only granted an exemption from the statewide hiring freeze to hire licensing staff. The Bureau had no enforcement staff until well over a year and a half from the time it came into existence.

As previously discussed, BPPE is facing significant problems processing applications, addressing student complaints and ensuring that licensed institutions are operating in compliance with the law. At the very least, it makes sense for BPPE to be granted additional spending authority to address the myriad challenges it faces. It may also make sense for BPPE to use some of its resources to establish processes and procedures, conduct staff and institutional trainings on a regular basis, hold Advisory Committee meetings throughout the state and even purchase an enhanced data collection system to replace the current inadequate system it relies on. BPPE could also greatly benefit from utilizing its vast resources to hire the types of individuals necessary to complete the work associated with regulating educational institutions, such as a large number of trained education quality experts with experience reviewing program quality, a large number of experienced investigators throughout the

state, or a large number of attorneys who can guide BPPE staff through the complexities of the Act and related state and federal regulations for institutions.

BPPE is authorized to adjust fees through regulation, but the Act outlines a relatively convoluted process by which this could take place, forcing the Bureau to first rely on regulations to determine that adjusting those fees is consistent with the intent of the Act, then promulgate regulations to adjust fees. Another provision related to fees grants very broad authority to BPPE to reduce an institution's fees if it determines that the annual cost of providing oversight and review of an institution is less than the amount of money the institution pays. This provision leaves the Bureau potentially in the uncomfortable position of having a large pot of unspent money and negotiating with unhappy licensees who use that factor to try to require the Bureau to reduce their fees. The former BPPVE faced a number of criticisms for regulatory functions being potentially left to staff and this provision has the potential to create a haphazard system of fee collection, and leaving what should be a consistent approach to the discretion of staff. If this provision were used by schools on a regular basis, the current BPPE, facing its many regulatory challenges, could very well be asked to reduce fees for the bulk of its licensee population.

The Committees should be concerned about such a large amount of money in reserves which may necessitate a period of time where fees are not collected. Students are best protected by the appropriate, timely spending of resources necessary to enforce the Act and uphold important protections.

**Staff Recommendation:** ***The Bureau should be granted additional spending authority to improve operations and increase efficiency through the hiring of appropriate staff, the ability to conduct regular staff trainings, the purchase of an enhanced data tracking system and other tools necessary for the Bureau to meet its consumer protection mandate, as well as provide quality regulation of private postsecondary educational institutions. The Committees may also wish to change the mechanism by which fees are reduced, when necessary, and delete the provision authorizing BPPE staff to decrease fees if it determines that the cost of regulation of an institution is less than the cost of fees.***

## *LICENSING AND EXEMPTION ISSUES*

### ISSUE #5: (UNACCREDITED DEGREE GRANTING PROGRAMS.) Accreditation provides a basis for determining educational quality and as such, may be an important measure for assessing the value of degree granting programs. Should institutions offering degrees in California be accredited?

**Background:** Accreditation is a voluntary, non-governmental peer review process utilized for the purpose of determining academic quality of higher education institutions. Under federal law, USDE is required to publish a list of nationally recognized accrediting agencies deemed reliable authorities on the quality of education or training provided by their accredited institutions. Only those institutions accredited by a USDE-recognized accrediting organization are eligible to participate in federal student financial assistance programs. While the accrediting process is not perfect and does not focus on fair business practices that can impact a student's success, accreditation, both regional, national and program specific can provide a baseline measure of quality education.

Unaccredited degrees can limit a student's career options. Some career fields and employers require degrees from accredited colleges; this is especially true in professions like education and health care, where certification or licensure is a pre-requisite for employment. While California licensure requirements in the health care field vary; physicians, dentists, clinical social workers, optometrists, and chiropractors must obtain their required *degrees* from accredited institutions or institutions approved by their respective licensing boards.

Students may be better served, and the Bureau's workload decreased, by amending the Act to require that *degree granting programs* be accredited. Unaccredited programs may still be able to operate in the state and receive approval from BPPE, but instead could offer certificates or other types of completion awards than a degree.

**Staff Recommendation:** ***The Committees may wish to amend the Act to increase the quality of educational programs in California by requiring institutions offering a degree to be accredited in order to obtain BPPE approval to operate. The Committees may wish to provide a phase-in period for this requirement to allow unaccredited degree programs time to meet the accreditation requirement. The Committees may also wish to require that currently unaccredited degree granting programs either change their program to offer certificates or update the Bureau as to their plan for obtaining accreditation. The Committees may also wish to require new institutions applying to the Bureau as an unaccredited degree granting program to provide a similar plan for accreditation with their initial application for approval.***

## ISSUE #6: (OVERSIGHT BY BPPE OF DISTANCE LEARNING.) Institutions regulated by the Bureau are required to have a physical presence in California, however the rise of innovation and distance learning through online courses has created potential gaps in student protections. What is the status of regulating distance learning programs? Is there a role for the Bureau to play in promoting the interests of California students enrolled in programs based in another state?

**Background:** The Act broadly defines private postsecondary education to include private entities with a *physical presence* in California that are offering formal postsecondary academic, vocational, or continuing professional education programs to the public for a charge. According to a recent report by the Legislative Analyst Office (LAO), because the Bureau regulates only schools with a physical presence in the state, California students enrolled in online programs offered by institutions based in other states do not benefit from the oversight provided by the Act. LAO points out that recent action by USDE on regulations governing Title IV financial aid would require out-of-state schools enrolling California students to receive approval in California and also create a structure whereby California schools enrolling students in other states would need to be authorized by each of those states. LAO states that such state-by-state approval can be a barrier for institutions offering distance education because of the considerable complexity and cost of navigating differing requirements in multiple states.

In response to these issues, a group of institutions, states, and policy organizations is developing the State Authorization Reciprocity Agreement (SARA) whereby 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. This agreement will facilitate multistate approval

for institutions while providing each state assurance that participating colleges meet common standards and have meaningful accountability and complaint-resolution procedures in place.

In California, requiring BPPE approval of out-of-state distance education providers enrolling California students could enhance the student protections and recourse for students in the event of a school closure. However, relying on other states' laws, regulations and enforcement may not provide these students the same protections as those attending brick and mortar schools. As such, if the BPPE is granted authority at some point in the future to enter into reciprocity agreements for purposes of regulating distance education programs, it may be necessary to clarify that the other states' regulatory structure is comparable to California and provides the same opportunities for students as the Act. It may also be appropriate to clarify that agreements the BPPE enters into allow for the sharing of enforcement information and actions and information disclosed to California students.

**Staff Recommendation:** ***The Committees may wish to examine the issue of reciprocity agreements further prior to authorizing the Bureau to enter into agreements. While SARA is the most frequently discussed option for reciprocity in distance education regulation, there may be other options and avenues in the future. The Committees may wish to establish standards for the reciprocity agreements BPPE enters into, if any, and basic protections that must be in place prior to California entering into an agreement.***

## ISSUE #7: (EXEMPTION OF REGIONALLY ACCREDITED SCHOOLS.) The Bureau relies on information from accreditors to verify that institutions have been reviewed for certain measures of educational quality. The Act exempts regionally accredited institutions from regulation by the Bureau.

**Background:** The former Act and all previous legislation dealing with BPPVE contained a specific exemption for schools accredited by the Western regional accrediting agency; WASC. Challenges to this exemption arose in 2007, when the US District Court in *Daghlian v. DeVry* ruled that the practice in California of exempting WASC accredited schools from state oversight by the Bureau was, in the absence of a clear policy rationale for doing so, a violation of the Commerce Clause of the federal Constitution. In the drafting of AB 48 and attempts to extend the WASC exemption, it was determined, based on oral legal opinion from Legislative Counsel, that naming one regional accrediting agency like WASC in statute and granting certain privileges (like an exemption from regulation) is discriminatory because if the pathway to exemption is based on geography, not all institutions would be eligible to qualify for exemption. Continuing the historical precedence and granting only a WASC exemption could have subjected BPPE to further lawsuits and potentially invalidate the exemption. While all six recognized regional accrediting agencies do much of the same work and are subject to the same requirements in order to continue to be approved by USDE, there are some notable differences between accreditors. One important difference in regards to public accountability and transparency, in 2012, WASC became the only accrediting agency to require public disclosure of specific accrediting documents, including the institution's self-study (WASC-ACCJC), the visiting team review report, and the final action letter. At the time of drafting AB 48, however, there were no verifiable criteria to differentiate between regional accreditors and, as a result, AB 48 granted an exemption to all regionally accredited institutions, requiring those accredited by an entity other than WASC to be subject to the requirements for STRF.

Over the last several years the federal government has looked into the private postsecondary sector with the intent to determine if stronger laws are necessary to ensure adequate quality of schools that are eligible to receive Title IV financial aid funding. In October 2010, this debate culminated with the issuance of a set of revised Title IV regulations. There are numerous regulatory changes including recalculating the loan default rate, redefining a credit hour, requiring assurances that students can be gainfully employed upon graduation, etc. There are, additionally, several specific regulations aimed at changing the way California and other states regulate institutions.

Of primary importance to California institutions are the requirements that institutions obtain "state authorization" and have an independent complaint process:

> Section 600.9(a)(1)(i)(a) indicates that institutions must be named by state law, charter or be recognized through an "action issued by an appropriate state agency or entity" in order to be excluded from a state oversight/approval process. Public colleges and some private non-profit colleges (through charters) quite clearly meet this requirement. However, the vast majority of private colleges that were exempt from AB 48 do not meet this requirement.
>
> Section 600.9(a)(1) requires all schools, even those public schools recognized by the state as higher education institutions, to have an independent student complaint process through a state agency.

Schools were allowed to apply for up to 2-year implementation extensions for a variety of reasons, including if the state could not provide the necessary state authorization by July 1, 2011. The regulation will become a reality for schools this July 1, 2014.

In response, as previously discussed, a number of institutions exempt under the Act have chosen to voluntarily come under the Bureau's oversight for purposes of maintaining Title IV eligibility. These institutions can apply to BPPE on the "Approval by Means of Accreditation" application and once the Bureau grants approval, institutions are subject to all provisions contained in the Act and related regulations. A number of regionally accredited institutions do not believe that they should be subject to the Bureau's authority and have requested a pathway to achieve compliance with USDE regulations by being recognized by BPPE without having to remain accountable for any of the student protections provided within the Act. This two-tiered system, or notion that one type of entity would only be subject to certain provisions administered by BPPE, relying on accreditors, creates a complicated system that could overwhelm an already struggling Bureau and send the state down a path of unclear oversight and regulatory authority – the very heart of why BPPVE was allowed to sunset.

Accrediting agencies are typically not focused on the business practices of institutions and rather make determinations about an institution's educational quality. Accreditation is not based on the outcomes of students at a particular institution and does not necessarily require compliance with basic consumer protection laws. A 2012 report issued by the U.S. Senate Committee on Health, Education, Labor and Pensions focusing on problems throughout the for-profit higher education sector noted that there may be problems inherent in the accreditation peer review process in which people who review schools and decide whether to grant or deny accreditation come directly from educational institutions within the same accrediting agency. As highlighted above, a number of Attorneys General throughout the nation have initiated investigations and lawsuits against schools, including regionally accredited institutions. Working in partnership with accreditors and maintaining open dialogue with accrediting agencies can assist BPPE in effectively overseeing schools but does not necessarily ensure that students' interests are prioritized.

**Staff Recommendation:** ***Students are best protected by a single system for regulation of private postsecondary institutions in California. A pathway exists currently for exempt institutions to maintain Title IV eligibility by voluntarily coming under the Bureau's jurisdiction. The Committees may wish to establish criteria other than the type of or lack of accreditation for the Bureau to focus its efforts. The Bureau should update the Committees on the number of regionally accredited institutions that have submitted applications or been granted licensure by the Bureau. The Bureau should explain to the Committees any challenges that could arise if some schools are only subject to some provisions of the Act while others were subject to all provisions.***

## ISSUE #8: (TRANSFERABILITY AND THE REQUIREMENT FOR CERTAIN TYPES OF ACCREDITATION BY DCA ENTITIES.) Students often struggle in their attempt to transfer credits earned at one institution when enrolling in a program at another institution. There are also wide discrepancies in the types of accreditation schools are required to have in order to be recognized by DCA licensing boards.

**Background:** A further issue related to accreditation is the type of accreditation required by a number of licensing entities. Certain boards under DCA require regional accreditation for the educational programs completed by their applicants. The Dental Hygiene Committee of California, for example, requires that a dental hygiene program be offered by an educational institution accredited by a regional accrediting agency while the Board of Registered Nursing requires that a nursing school be accredited by a USDE recognized accrediting agency. Other entities simply require accreditation, without specifying the type, while still others may only require some programmatic approval, certification or accreditation by a national body which is not a USDE accrediting agency.

Complicating this issue further is that of transferability, which is often erroneously portrayed as being connected to the type of accreditation an institution or educational program has. Transferability, and the determination of whether or not a student's credits earned at one educational institution will transfer to another institution is the responsibility of faculty. While consumers are provided disclosures under the Act and through regulations about the possibility that units may not transfer, inconsistencies in the awareness of, and understanding of DCA board staff about accreditation and transferability, may be impacting students' ability to succeed.

**Staff Recommendation:** ***The Committees may wish to create uniformity for the accreditation of educational institutions attended by potential licensees of DCA boards. The Committees may also wish to establish a task force comprised of board representatives, students, faculty, higher education experts and representatives from accrediting agencies to provide advice on the issues of appropriate accreditation and options for transferability from certain institutions like those regulated by the Bureau to other segments of higher education in California. The Committees may wish to clarify required disclosures to students related to transferability to ensure that they are provided in easily understandable language and may wish to require that schools provide information about the institutions with which they have articulation agreements.***

## ISSUE #9: (RELATIONSHIP OF THE BUREAU TO OTHER LICENSING ENTITIES.) The Bureau approves institutions that may also be subject to comprehensive program approval by other licensing entities, such as the boards at DCA. The Bureau may be able to utilize the

**expertise of staff at other licensing agencies to assist in the approval process, as licensing boards are typically familiar with the education and training that can bring about a quality licensee. The Bureau currently has MOUs with a number of entities and should consider creating additional formal relationships with entities that can assist the Bureau in implementing the Act, and with those that may also assist in providing subject matter expertise while streamlining Bureau processes.**

**Background:** The Act provides that if an institution offers an educational program in a profession, occupation, trade, or career field that requires licensure in California, the institution must have educational program approval from the appropriate state licensing agency for any student who completes that program to sit for any required licensure exam. The law is intended to deal with the issue of students completing an educational program specifically designed to prepare them for certain occupations that in reality does not meet any requirements for education required for licensure.

A number of boards within DCA and other state agencies also have a role in overseeing educational programs attended by licensees, however these may not have express authority to approve institutions offering these programs. In order to be listed as an approved provider on the Employment Development Department's (EDD) Eligible Training Provider List (ETLP), an institution must be approved by BPPE. While some boards and agencies are required to review the curriculum and sometimes even the actual institutions offering programs, others require only BPPE approval in order to meet educational requirements for licensure, certification or registration. The Board of Barbering and Cosmetology (BBC) for example, approves curriculum, facilities, equipment and textbooks for schools offering training programs for eventual licensees, but schools must also be approved by BPPE, as BBC has no statutory authority or experience to uphold student protections like disclosures and fair business practices. The California Acupuncture Board establishes standards for acupuncture programs and approves the training programs and curriculum within institutions and colleges offering education and training programs in the practice of acupuncture and oriental medicine. Acupuncture schools must also be approved by the Bureau. The Board of Vocational Nursing and Psychiatric Technicians (BVNPT) staff grants approval to Vocational Nursing and Psychiatric Technician *programs* but does not have oversight of *institutions* offering these programs. Further, an institution may offer programs approved by BVNPT and other licensing boards, while still being approved as an institution by BPPE. The Board of Registered Nursing (BRN) was recently granted complete authority to regulate nursing schools in California, following years of extremely comprehensive standards BRN required for nursing schools, like the administration and organization of a program, faculty qualifications, faculty responsibilities, curriculum, clinical facilities and assurances of a procedure for resolving student grievances. Many DCA boards actually gained new, unprecedented authority during the sunset of the former BPPVE when California was without a regulatory structure for private postsecondary institutions that may have initially intended to be nothing more than a stop-gap effort to ensure some measure of program quality while a new Bureau was reconstituted.

Given the expertise of staff at boards and other licensing bodies with the educational and training requirements for licensees to safely interact with the public and perform the functions required of their job, it is entirely appropriate for these entities to play a more formal role in program approval. The Bureau can look to other state agency partners for insight about program structure and quality and should use these entities as a resource to better streamline its licensing and enforcement operations. Similarly, it may be appropriate for these entities to have the ability to remove approval of programs that do not meet the educational quality standards necessary for an individual to learn how to be a safe, effective licensee. BPPE currently has formal Memorandums of Understanding (MOUs) with a number of licensing boards who play a role in approval of educational programs required for licensure

and could benefit from seeking and utilizing more of these subject matter experts. MOUs can ensure coordinated oversight of programs and may also prevent unnecessary duplication or dual oversight. BPPE has ample financial resources that it could use when, for example, it may be appropriate for a licensing board to play a more active role in helping the Bureau effectively evaluate the components of a potential educational program.

**Staff Recommendation:** ***The Bureau should describe the current MOUs it has with other entities and the MOUs it is currently working to establish. The Committees may wish to better understand the role of, and efforts by DCA to promote educational quality in workforce training programs approved, recognized or required by DCA boards for licensure. The Committees may wish to ensure that the Bureau establish partnerships and working relationships with DCA boards, but should be cautious about replacing Bureau responsibilities entirely by formally transferring school evaluation to licensing entities, as suggested in the BSA report. The Committees may wish to strengthen the Act to ensure that students are receiving training that allows them to become licensed when the intention of their enrollment is licensure.***

## ISSUE #10: (MASSAGE THERAPY SCHOOLS.) BPPE approves the majority of massage therapy schools in California while the California Massage Therapy Council (CAMTC) recognizes Certified Massage Therapists who have completed certain educational requirements, including hours completed at a CAMTC approved school. What is the working relationship between BPPE and CAMTC? What structure for oversight best serves consumers and students? Should BPPE give more consideration to schools which are approved and disapproved by CAMTC?

**Background:** The California Massage Therapy Council (CAMTC) is a nonprofit organization responsible for the voluntary certification of massage practitioners and massage therapists. Currently, recognition as a Certified Massage Therapist requires 500 hours of education, 250 of which need to be obtained from a CAMTC "approved" school(s). Business and Professions Code 4600 specifies that, "[a]pproved school' or 'approved massage school' means a school approved by [CAMTC] that meets minimum standards for training and curriculum in massage and related subjects" and that is approved by at least one other specified entities, including BPPE, DCA, the organizations that accredit junior and community colleges, corresponding agencies in other states, and California State University and University of California schools. The remaining 250 hours of education needed for certification may be obtained from any approved school or from a continuing education provider approved by DCA. This certification pathway was implemented as a grandfathering provision to provide schools with the opportunity to revise and update their massage therapy programs to meet a 500-hour program (the minimum level required by many states). After December 31, 2015, applicants seeking certification as a massage therapist will be required to obtain all educational hours from CAMTC-approved schools and the opportunity to obtain 250 hours of education needed for certification from continuing education providers will no longer be permitted.

The majority of massage schools rely on BPPE to meet the required criteria that it also be approved by another entity, in addition to CAMTC. According to CAMTC in its Sunset Review Report to the Committees, it does not proactively approve schools, but rather disapproves a school if it finds that a school engages in inappropriate behavior or does not meet the minimum standards for training and curriculum. Schools may be disapproved for selling or offering to sell transcripts, failing to require students to attend the classes listed on the transcript, failure to require students to attend all of the

hours listed on the transcript, or engaging in fraudulent practices. CAMTC is responsible for determining that schools meet the specified requirements necessary for certification. In addition, CAMTC has broad authority to investigate whether an applicant actually received the education claimed on an application or provided through a transcript. CAMTC reports that it has unapproved approximately 46 schools and placed seven on its "inadequate education list," which means that applicants who have taken courses at those schools must submit additional proof of education beyond a transcript and diploma.

There is currently no formal relationship between CAMTC and the Bureau, however, CAMTC often relies on the Bureau to remove its approval of a massage therapy school based on CAMTC investigations, information and background. While BPPE is subject to myriad due process rules for its enforcement activities, including taking actions against a school or during the approval removal process, CAMTC, as a nonprofit, non-state entity, does not have to abide by the same rules and processes and may simply determine that a school is considered unapproved upon CAMTC review. This lack of coordination can result in a massage school operating with BPPE approval but not CAMTC approval, rendering the students unable to use credits earned at that school toward their certification by CAMTC. Currently, there are 46 schools considered unapproved schools by CAMTC, all of which are still approved by BPPE. This disjointed relationship between the two entities impacts both BPPE's and CAMTC's ability to ensure that approved massage programs are operating properly and students are not being harmed or misled as to the value of their education. It is believed that the CAMTC will begin to take a more active role in the actual approval of massage therapy schools in the future and provide a list of both the approved and unapproved list of schools on its website. Thus, the need for both CAMTC and the BPPE will become even more important.

**Staff Recommendation:** ***The Committees may wish to amend the Private Postsecondary Education Act to clarify that the BPPE shall take into consideration either the approval or disapproval of a massage therapy school by the CAMTC and both entities should enter into a more formal MOU to delineate the role each entity has in approving massage therapy schools.***

## ISSUE #11: (ENGLISH LANGUAGE TRAINING PROGRAMS.) Many English Language Training Programs provide foreign students in the United States with non-vocational English language instruction, including preparation for English proficiency exams. However, not all schools are solely offering this type of educational opportunity and may look more like traditional training institutions regulated by the Bureau.

**Background:** According to U.S. Immigration and Customs Enforcement (ICE), under the federal Department of Homeland Security, “the Student and Exchange Visitor Program (SEVP) is a part of the National Security Investigations Division and acts as a bridge for government organizations that have an interest in information on nonimmigrants whose primary reason for coming to the United States is to be students. SEVP manages schools, nonimmigrant students in the F (academic) and M (vocational) visa classifications and their dependents.”

According to ICE, on Dec. 14, 2010, President Obama signed the Accreditation of English Language Training Programs Act (commonly referred to as the "Accreditation Act"), which amended Section 101(a)(15)(F)(i) of the Immigration and Nationality Act to state that F-1 nonimmigrant students intending to pursue an English language training course of study must enroll in an English language training program that has been accredited by a regional or national accrediting agency recognized by

USDE. As a result, the Student and Exchange Visitor Program (SEVP) is responsible for reviewing SEVP-certified English language training, commonly referred to as ESL, programs for compliance with the accreditation requirements as set forth in the law. However, not all schools offering ESL and overseen by SEVP are *solely* operating ESL programs.

At issue is whether these schools should also be subject to oversight by BPPE and regulated in California in accordance with the Act. Many of these schools do not receive Title IV funding, do not make any promises of employment and aim to provide an opportunity for foreign students to experience American culture while improving their English skills. Schools have attempted through legislation to further clarify the current exemption for avocational or recreational education to determine if they will be eligible for an outright exemption from the Act.

In a recent letter to representatives of a coalition of ELTPs, BPPE specified that entities that do not fall within the definition of a private postsecondary educational institution are not eligible for the Bureau's approval or exemption, as these entities are not governed by scope of the Act. BPPE went on to advise that based on a description of the institutions as entities that: (1) provide foreign students cultural and touristic experiences in California; (2) provide curriculum which is designed to serve students of all ages and not primarily students past the compulsory age of secondary education; (3) do not provide degrees or diplomas, or offer academic, vocational, or continuing professional education; (4) do not offer courses designed to lead to employment; and, (5) enroll students that are required under the terms of their visa to return to their home country within 60 days of the conclusion of their studies, do not appear to meet the definition of a private postsecondary educational institution and are therefore not subject to the Act and regulation by BPPE.

BPPE did clarify, however, if such an entity promotes itself as a college or university and/or offers programs designed or advertised to lead to career opportunities or postsecondary academic advancements, the entity would fall within the definition of a private postsecondary educational institution and would not meet the criteria for an exemption under the provisions for an avocational and recreational education contained in the Act.

**Staff Recommendation:** ***It does not appear necessary to make statutory changes to ensure that ELTPs are qualified for exemptions from the Act and that their specific programs are defined to ensure that exemption. The Bureau should update the Committees on its continued outreach and communication with ELTPs solely offering ESL programs, subject to the requirements established by SEVP, and advise the Committees under what circumstances changes to the Act related to these institutions are necessary.***

## ISSUE #12: (FLIGHT SCHOOLS.) Flight schools subject to FAA regulation are exempt from the Act. Does the current language of the exemption make it clear that flight schools are prohibited from collecting $2500 or more in fees up front in order to claim an exemption?

**Background:** The FAA regulates most aspects of flight instruction. However, federal law does not regulate the business practices of many of these flight schools, including the types of student protections provided by Bureau.

The Former Act specified that all institutions that were certified to offer flight instruction by the FAA, and that operated in California on December 31, 1990, receive approval from the BPPVE for a period

not to exceed three years. It also required that on or before June 30, 1999, the BPPVE to work in cooperation with the FAA on reviewing each of these institutions to determine whether the institution was in compliance with the requirements of the Former Act. The responsibility for monitoring and enforcing institutional compliance for certain instructions under the Former Act related to student protections was the responsibility of the BPPVE. The Former Act provided Legislative intent for the BPPVE to enter into a MOU with the FAA to "delineate the responsibilities of each agency for the approval and monitoring of these institutions," but also made clear that flight schools would be subject certain fair business practices. When the Former Act expired, and the BPPVE was sunsetted in 2008, the MOU with the FAA also expired.

Over the past number of years, a number of flight schools closed abruptly and failed to provide appropriate student disclosures. Silver State Helicopters was a helicopter flight training, sight-seeing tours, and charter air operator that at one time had flight schools located in 34 cities around the nation. In most instances, students paid upwards of $70,000 in advance for the Silver State program. Silver State was known throughout the industry for using aggressive sales tactics to recruit students to the program and also experienced a number of crashes throughout the nation. In 2008, the company's owner and founder notified employees that their company would be out of business effective at 5:00 P.M. that same day and jobs would be terminated at that time, leaving more than 800 employees without jobs and more than 2,500 flight students with millions in debt. American School of Aviation (ASA) was a commercial flight school that operated in Atwater, California and trained international students from India. The school opened in 2005 at the Castle Commerce Center, located on a former Air Force Base, and closed in May 2008. Most students paid approximately $40,000 in tuition in advance which was supposed to be placed in a trust fund and would be withdrawn as the students progressed through the training. In May of 2008, the school was forced to close due to a lack of insurance. Soon after, students living in the school's dorms were evicted because the school failed to pay its water bill and the water was shut off. Approximately 100 students were left without their licenses despite paying the tuition.

The experience of Silver State, ASA and other sudden flight school closures, that left many students with no return on thousands of dollars in paid tuition, was the primary reason for the Legislature's inclusion of flight training institutions for regulation by the new Bureau under AB 48. In 2010, following passage of the Act, the flight instruction community in California expressed serious concerns and dismay that they would suddenly be subject to BPPE oversight after years of exemption through the Former Bureau's MOU with the FAA. Flight schools argued that Bureau regulation would force them to shut down their operations, leading to the demise of the industry in this state and outlined the negative economic impacts that would result from regulation, ranging from firing their employees, to no longer purchasing jet fuel with taxes that go to local government, and the potential closure of small airports throughout the state. In response to the flight schools' concerns, SB 619 (Fuller, Chapter 309, Statutes of 2011) provided an exemption from the Act for "flight instruction providers or programs that provide flight instruction pursuant to Federal Aviation Administration (FAA) regulations and do not require students to enter into written or oral contracts of indebtedness and do not require prepayment of instruction-related costs in excess of $2,500."

The language exempts a flight school that does not *require* prepayment of fees in excess of $2,500, however it may not be clear that the actual intent in setting a $2,500 threshold is to ensure that money is not collected up front.

**Staff Recommendation:** ***The Committees may wish to amend the Act to ensure that flight schools exempt from the act are prohibited from collecting more than $2500 in prepayment from students,***

***clarifying current law so a flight school actually charging $2500 or more up front is not able to be granted an exemption simply on the technicality that they do not require prepayment.***

**ISSUE #13: (CODING ACADEMIES.) Innovative training programs throughout the state offer opportunities for individuals to learn and boost skills that may result in employment in high demand technology positions. The Bureau recently advised a number of programs that they were operating without approval and in violation of the Act. Should these coding boot camps be regulated like other private postsecondary institutions and programs? Are there criteria that set them apart which may warrant consideration of an exemption or other method for state oversight?**

**Background:** Individuals possessing precise skills and training in the field of science, technology and engineering are an extremely valuable commodity for many employers in California, as well as throughout the nation. High-tech employees like coders are in high demand but there are currently significant shortages of both qualified individuals and qualified training programs. A number of online programs, as well as brick and mortar schools, now provide technology-related skills and training opportunities in an attempt to meet the huge need for potential employees like software developers with a background in these specialized areas.

However, what may have initially started as peer-to-peer training and employer initiated skills enhancement now looks very much like private postsecondary education. Individuals pay money for training in digital skills like software development, data science, and user experience design. These bootcamps, as they are often referred to, are not accredited and do not accept Title IV money (however, many students borrow significant sums of money through private loans, credit cards, or friends and family, to pay for the program and the time away from work) but according to a recent article in Venture Beat (VB), dedicated to news related to technology innovation and technology trends, the programs typically last 10 to 12 weeks with potential recruits often being told that they have a shot at a job or internship at a competitive tech company like Facebook or Google. Tuition costs vary but, for example, VB found that a 10 week program at Hackbright Academy in San Francisco is $15,000 but full scholarships are available and students who land a job at a company in the Hackbright network can request a partial refund. VB also reported that at Hack Reactor, also in San Francisco, where tuition costs over $17,000, 99 percent of students are offered a job at companies like Adobe and Google where the average salary for a computer scientist could be over six figures.

The goal for many bootcamps is to help underemployed or unemployed Californians find jobs in the tech sector. Hackbright Academy runs a quarterly engineering fellowship for women which it describes as a 12-week accelerated software development program designed to help women become awesome programmers. According to Hackbright, students learn the fundamentals of computer science and modern web development, and are introduced to Silicon Valley companies looking to expand their engineering teams. Hackbright partners with companies like Facebook, Twitter, Pinterest, SurveyMonkey, Eventbrite, to name a few. According to the bootcamps in a recent statement on Hack Reactor's Web site, "thousands of individuals have participated, often finding high-paying employment in the field, and the programs themselves employ hundreds of individuals. We are a valuable, thriving, and well-intentioned sector of California's economy and workforce development, and our programs offer high-demand skills training to unemployed and underemployed Californians."

In mid-January, BPPE issued cease and desist letters to a number of bootcamps, with the intention of bringing them into compliance with the Act by becoming licensed. Some have initiated the application process, as the Act clearly establishes that it is appropriate for the Bureau to regulate training programs. But as described previously, BPPE faces significant backlogs in its licensing process and the threat of a $50,000 fine for operating without approval may force bootcamps to stop offering their innovative programs that in most instances lead to actual job placement in high wage positions, the very goal of training programs and the ideal outcome for students. Additionally, it may be difficult for BPPE to ensure that bootcamps remain in compliance with the Act and are offering programs approved by the Bureau, given the extremely fluid nature of the technology field in general and the constantly evolving advances in technology. In many instances, bootcamps will need to swiftly adapt a program or change courses to reflect trends in the technology field which the Bureau may not be in a position to stay on top of.

**Staff Recommendation:** ***The Committees may wish to evaluate whether students attending bootcamps should receive certain disclosures prior to enrollment and whether reporting of student outcomes are appropriate. The Committees may wish to consider whether it is appropriate to regulate bootcamps in the same manner and subject to the same provisions of the Act as other private training programs. The Committees may wish to allow for temporary approval of bootcamps under the Act or temporarily exempt bootcamps from the Act for one year (provided that bootcamps meet strict refund requirements) , and revisit the issue of appropriate state regulation, working collectively with stakeholders like the Bureau, bootcamp owners and operators, former students, employers, state agencies and higher education experts. The Committees may also wish to evaluate what steps the state and Bureau can take to generally promote the growth of high quality programs intended to train for jobs in the ever-growing high tech field.***

## ISSUE #14: (TRANSITIONAL PROVISIONS.) The Bureau may lack clarity as to how to deal with the denial of approval of an institution granted approval under the transitional provisions in the Act.

**Background:** The Act allows institutions that began operations on or after July 1, 2007, at which time there was no oversight for private postsecondary institutions in California, to continue to operate but requires these institutions to comply with the Act and submit an application for approval. However, when one of these institutions is denied approval, it is unclear whether it is subject to the same requirements of new applicants denied licensure, specifically whether or not these schools must close during the process of appealing a denial or whether they may remain open while trying to become approved to operate.

**Staff Recommendation:** ***The Committees may wish to eliminate the de-facto approval for institutions that began operating during the sunset period to ensure that schools not approved by the Bureau are not open for business.***

## ISSUE #15: (LICENSING ENHANCEMENTS.) Through small changes in the Act, the Bureau may be able to achieve efficiencies and potentially streamline certain parts of its lengthy licensing process.

**Background:** There are a number of areas in the Act that could be modified to additionally assist BPPE in its ability to effectively and quickly review licenses and grant approval to institutions.

The Act requires institutions making substantive changes to its program, operations or anything that would change the initial information initially approved by the Bureau to be authorized by the Bureau to make those changes. For accredited institutions approved by BPPE by means of their accreditation, it may make sense to specify that the Bureau does not also need to approve the change, but rather can rely on the effective date of the substantive change as approved by the institution's accreditor.

**Staff Recommendation:** ***The Committees may wish to consider amending the Act to create pathways for a streamlined licensing process when identified and available, ensuring that program integrity and student information are not negatively impacted.***

## ***ENFORCEMENT***

**ISSUE #16: (COMPLIANCE INSPECTIONS.) The Bureau is mandated by law to perform compliance inspections of institutions but is unable to currently meet that requirement. The Bureau also lacks coordinated procedures and processes to prioritize when inspections should be performed and on which schools the Bureau should dedicate its efforts. How many inspections has the Bureau actually performed, including how many announced and unannounced desk and in-person inspections? Does the Bureau have the appropriate staff and investigators necessary to perform unannounced compliance inspections that may stem from serious concerns?**

**Background:** The Bureau's mission is to protect students. One of the ways the Bureau achieves this objective is through announced and unannounced compliance inspections that ensure institutions are meeting the minimum operating standards outlined in the Act and regulations. The Bureau is mandated to perform at least one announced and one unannounced compliance inspection on each approved institution during each two-year cycle.

The Bureau is not meeting its statutory mandate and not completing compliance inspections. While staffing and organizational challenges for any new regulatory body have played a part, BPPE also lacks any necessary prioritization processes or standards by which to allocate its limited staff to first inspect the schools that may need the most attention.

BSA found that the Bureau has only inspected a fraction of the institutions that it should have inspected, failed to identify material violations during the inspections that it did conduct and was unable to complete inspections in a timely manner. BSA also found that BPPE did not adequately respond to violations that it did detect during inspections. The BSA report noted that the Bureau only performed 456 announced inspections and only two unannounced inspections between January 1, 2010 and August 6, 2013. BSA further found that the Bureau does not have a schedule that maps out its anticipated announced and unannounced inspection dates for institutions and while the Bureau reported to BSA that it had a plan to inspect every institution at least every two years, it put the plan on hold once it realized how long each inspection would take and the training that staff would require. BPPE then only established written procedures for prioritizing high-risk inspections in July 2013.

While BPPE does have regulations that set forth how it determines the total number of compliance inspections (including factors like the size of the institution, number and types of programs being offered, number and type of complaints and enforcement history), without standards for prioritizing

which schools are inspected, the Bureau will continue to struggle to meet requirements and students may suffer.

**Staff Recommendation:** ***There is already precedent for certain criteria such as cohort default rate, restrictions on accreditation and high program cost without a demonstration of aptitude prior to enrollment to be likely indicators of an institution's ability to comply with the Act. The Committees may wish to delineate certain criteria in statute that could assist the Bureau in prioritizing its inspections of institutions. The Bureau may also wish to consult its Advisory Committee on the criteria it can use to identify institutions that may require more immediate attention and those that may not need to be inspected right away. The Committees may also wish to decrease the number of mandatory inspections to reflect a more workable number given the challenges the Bureau faces with staffing, workload and training, or eliminate a statutory timeframe altogether. The Committees may also wish to grant the Bureau flexibility in determining when to conduct announced and unannounced inspections based on an evaluation of any possible criteria used to prioritize the licensees that are inspected. The Committees may wish to require the Bureau to work with accrediting agencies to consolidate oversight visits to institutions.***

## ISSUE #17: (UNLICENSED ACTIVITY.) Schools are required to be approved by the BPPE to operate in California and the Bureau is required to proactively identify unlicensed institutions. Given the scope of this task, limited staff at the Bureau and potential for schools to be operating in far corners of the state, the Bureau has struggled to comprehensively meet this requirement. What is the Bureau doing to address the issue of unlicensed institutions? What are the types of unlicensed institutions the Bureau most often deals with?

**Background:** BPPE is required under the Act to proactively identify unlicensed institutions. According to the BSA report, as of January, 2014, the Bureau does not have a program to do this and has not dedicated staff and resources to identifying and taken action against institutions operating without a license. BSA found that the Bureau usually identified unlicensed institutions when it received complaints from the public or notification from staff who worked in the Bureau's other units or from staff who saw or heard an advertisement on the radio or television. BSA was especially concerned that absent a way to tackle this responsibility, the Bureau does not do anything proactive to identify unlicensed activity such as dedicating one staff member to search for institutions or working with established entities at DCA to identify best practices related to unlicensed activity. Additionally, there may be a need for statutory clarity regarding the ability of institutions operating without approval to advertise.

BPPE's goals related to unlicensed activity are to bring the institution into compliance with the law and have them seek approval, bringing them under the Bureau's oversight, but in some instances compliance may not be the best option and the Bureau may need to take stronger steps to ensure that students are not taken advantage of or deceived. Some schools operating without approval would never be able to obtain approval and swift action, according to due process, may need to be taken.

**Staff Recommendation:** ***The Committees may wish to require the Bureau to establish a proactive program to identify unlicensed institutions, as recommended by BSA. The Committees may also wish to ensure that the Bureau takes proper action against unlicensed institutions, as recommended by BSA, by sanctioning these entities and tracking information related to enforcement. The Committees may also wish to amend the Act to allow the Bureau to post application denials on the***

***Web site to make consumers aware in the event that an institution is operating without a license and has been denied by the Bureau. Given the significant consumer harm potential involved in operating an unlicensed school, the Committees may also wish to create stronger penalties for institutions operating without approval.***

## ISSUE #18: (ENFORCEMENT IMPROVEMENTS.) While approvals are issued to "owners" of institutions, the Act may not be clear enough to ensure that the Bureau can take action against institution owners. Additionally, the Bureau may need to reevaluate due process requirements for institutions whose renewal has been denied. The Bureau may also benefit from dedicating resources to look into deceptive marketing practices.

**Background:** Under the Act, institutions are approved by the Bureau, but it may not have the proper clarity in statute to take action against the *owners* of institutions when necessary and in instances of school closures and other actions. The Act could be improved by clarifying that approvals are issued to owners of institutions and with that comes responsibility for the institution maintaining compliance with the law. Institution owners should not be able to avoid being subject to refunds and other measures for student recourse because of a lack of clarity in the Act.

There have also been issues related to the continued operation of an institution that has been denied a renewed approval to operate. By operation of law, once an institution's approval to operate has expired and their application for renewal of approval to operate has been denied, the institution does not have an approval to operate issued by the Bureau. However, Legislative intent may be unclear regarding whether that institution should be allowed to continue to operate during the appeal of their denial of renewal application. On one hand, if the institution's renewal of approval to operate application was denied due to major areas of non-compliance found at the institution, allowing the institution to continue to operate during appeal could cause unnecessary harm to students. On the other hand, if the institution's renewal application was denied for minor areas of non-compliance, forcing the institution to close could also harm current students on a pathway to certificate or degree. One important factor for consideration surrounds the significant delays in the Bureau's ability to bring appeals of licensing denials before an Administrative Law Judge; these delays do not appear to be the fault of the Bureau but instead are found at both the AG and the Office of Administrative Hearings.

As outlined above, a number of Attorneys General throughout the nation, including California, have opened investigations into, or have action pending against institutions based on deceptive marketing practices. BSA noted that the Bureau currently lacks the ability to thoroughly and thoughtfully review data provided by schools to ensure compliance with the law related to truth in advertising.

**Staff Recommendation:** ***The Committees may wish to clarify the Act to create consistent statutory language that ensures that approvals to operate are issued to institution owners and all disciplinary and enforcement actions are taken against institution owners. The Committees may also wish to review the due process implications of requiring an institution that has been denied a renewal to cease operations while an appeal is pending and working its way through the system toward a hearing. The Committees may wish to require the Bureau to have an investigative unit focused completely on deceptive marketing practices, given the severe nature of these violations and Bureau financial resources that could be dedicated to creating a unit staffed by experienced, trained investigators. The Committees may wish to allow the Bureau to whether an institution must close,***

***depending on the seriousness of the violation and may wish to direct the Bureau to use the Emergency Decision pathway when students are at risk of harm.***

## *ACCOUNTABILITY/STUDENT PROTECTIONS/FAIR BUSINESS PRACTICES*

**ISSUE #19: (COMPLAINTS.) The Bureau is not properly processing complaints, many of which may come from students. What are the barriers to effectively handling complaints? Why is it taking the Bureau so long to resolve complaints? Can additional staff help improve the Bureau's effectiveness in handling complaints?**

**Background:** Accepting, processing and acting on complaints from students is one of the key mechanisms by which the Bureau can ensure that licensees are in compliance with the Act and that students have options for action in the event that they are the victims of fraud or taken advantage of by schools. The timely processing of complaints provides the Bureau with critical information about their licensees and could assist the Bureau in prioritizing its work.

As outlined above, BPPE faces significant delays in the time is takes to process complaints which could result in necessary action being taken against institutions or the activation of necessary steps to assist students. According to information presented at the December 2013 Advisory Committee meeting, from July 2013 through November 2013, BPPE received 210 complaints, closed 131, still had 800 pending, issued citations for 2, referred 9 for further discipline and had 23 pending at the AG. While the Bureau established a process for prioritizing complaints in June 2013, according to urgent, high priority and routine, it does not appear the criteria are being used and are understood by Bureau staff. BSA noted that the Bureau did not prioritize complaints based on their severity and did not ensure that institutions quickly resolved the most serious violations that put students at risk. Complaints that should have been prioritized as urgent were often handled as routine. BSA also reported that in some instances, the Bureau closed complaints prematurely, without receiving confirmation that the institutions involved had resolved the pertinent issues. The Bureau does not appear to be effectively and thoroughly investigating complaints. According to BSA, current, former, and potential students may have suffered continued harm because of the Bureau's delays in complaint processing.

The Bureau's current timeframes for resolving complaints are unacceptable. While BPPE may receive additional staff in the current budget to address the backlog in complaints, immediate steps need to be taken to address the backlog and general issues surrounding the Bureau's seeming inability to properly act on complaints. Students will benefit from a strengthened complaint process, one in which BPPE has all of the necessary staffing resources, training and expertise to properly investigate complaints it receives, as well as additional tools like clear standards for prioritizing complaints and effectively taking action against violating schools to provide students proper relief.

**Staff Recommendation:** ***The Committees may wish to ensure that the Bureau acquires additional, experienced investigative staffing in the appropriate classifications to effectively process complaints. The Committees may wish to ensure that Bureau staff receive more training in areas, as noted by BSA, like evidence-gathering techniques and knowledge about when they have sufficient evidence to advance or close complaints. The Committees may wish to amend the Act to outline a complaints process for the Bureau to follow, including criteria for determining the order in which complaints are addressed as well as the necessary documentation, information and resources that will assist in***

***reviewing complaints, among other items.***

**ISSUE #20: (SCHOOL CLOSURES AND STRF.) The Bureau has assisted a number of students in the event of school closures and taken action to close bad schools, yet the Committees do not have information about the number of students impacted, the number of students the Bureau has assisted, the amount of STRF payments or even a differentiation between regular school closures due to the economic downturn and other factors versus shut downs forced by the Bureau. There are also multiple problems with the collection and administration of, as well as processing of claims and payments from the Student Tuition Recovery Fund. Additionally, there may be measures that can be taken to enhance student protections and recourse using STRF monies. STRF is an important tool for students and consumers but improper management and under-utilization hinder its effectiveness. How many students have been assisted by STRF? How much has been spent to provide tuition recovery? What are some examples of students being denied claims?**

**Background:** School closures have a significant impact on the lives of, and educational opportunities for students enrolled at the time of a closure. While some schools close simply because the cost of doing business is to high compared with their ability to earn a profit, others close suddenly and abruptly, leaving students in the lurch, many of whom have paid high up-front tuition costs and all of whom believed that they were investing in training that would eventually lead to greater job and economic opportunities. The Bureau plays a role in assisting students subject to a school closure and can also force a school to close if it violating the Act to such a significant degree that consumers are harmed by continued enrollment.

BPPE has assisted students during a number of school closures since 2010, and has also forced the closure of some schools, yet it is unclear exactly how many students have been assisted by Bureau efforts, what those efforts have been and how the Bureau tracks data related to school closures to be able to demonstrate its success in helping students. It is additionally unclear exactly how many schools closed, whether school closures have been tracked according to the type (forced, planned or abrupt/sudden), how many students have been impacted by a school closure, what kind of timelines the Bureau faced in closing a school, how many teach outs it assisted with and trends identified in closures that impacted large numbers of students.

The Student Tuition Recovery Fund (STRF) exists to relieve or mitigate economic losses suffered by students enrolled in BPPE approved programs or at non-WASC regionally accredited institutions. Institutions are required to charge students fifty cents ($.50) per one thousand dollars ($1,000) of institutional charges, rounded to the nearest thousand dollars which the institution then submits to BPPE as payment into the STRF. STRF payments are most commonly made when a student has made paid for or made payments toward an educational program and a school closes. At the time of a school closure, students may be eligible for tuition reimbursement by filing a claim with BPPE for a payout from STRF.

STRF, an important tool for students to have recourse in the event of a school closure, was insolvent under the Former Act and BPPVE and unable to meet the needs of students filing claims. The 2005 Monitor's report found that STRF claims payments sometimes lingered for more than two years and BPPVE rarely ensured institutions were paying the right amount of fees. At the time, BPPVE staff believed that only about half of the legally required fees were being paid. Due to these STRF

shortages, BPPVE routinely used fees paid by degree granting institutions to pay claims of students from non-degree granting schools. An internal 2002 DCA audit also recommended that BPPVE establish a process to ensure all STRF fees and assessments are collected, ensuring payment of STRF claims and that payments are made by institutions, developing written complaint handling procedures, and taking disciplinary action when necessary.

BSA reported that 915 total STRF claims were filed between 2008 and 2013, 473 of which are still outstanding. According to BSA, the Bureau's procedures specify that it will perform an initial review of recovery fund claims within 30 days of receiving them, it has not established any other formal goals for processing the claims. BSA reviewed 30 claims and found that it took an average of 290 days to process 29 of them. Additionally, as outlined earlier, BPPE's outdated data system may be hindering its ability to appropriately collect, administer and process STRF payments. BSA states that the Bureau lacks the information necessary to identify which stages of the process are contributing to the delay and that BPPE does not track the amount of time its staff take to process the claims or the amount of time students take to provide the bureau with the supporting materials and documents that may be necessary to process a claim. BSA also found that the bureau incorrectly processed seven of the 30 claims we reviewed, resulting in a roughly $2,400 overpayment. BSA reported that the Bureau's STRF manager stated that the Bureau has struggled to ensure that it pays students in a timely manner and in some instances has also not paid students the correct amount of money. BPPE also struggles to properly reconcile the STRF payments it receives from institutions. BSA found that the Bureau has not established procedures to track whether institutions actually forward the assessments they collect from their students and as a result, does not know whether institutions remit their assessments each quarter.

Currently, STRF is more than solvent, having met the statutory cap of $25 million established in the Act over a year ago. BPPE has proposed regulations to significantly decrease the amount of money paid into the fund, as well as completely stop collecting STRF for a period of four years to avoid being in violation of the Act and the established maximum for the fund. There is some concern that prohibiting the collection of STRF as a means of avoiding conflict with the law does not take the same consumer oriented approach as enhancing efforts to properly utilize the funds in a timely manner or determining whether there are other appropriate uses for the fund. There are currently very narrow options for the use of STRF when an institution closes that could be expanded beyond tuition repayment to, for example, assist in the repayment of student loans for students who have been subject to a school closure. STRF could also be used to repay student loans for students attending institutions found to be in violation of the Act (for example, if the school is cited for failing to provide required disclosures, or for providing false or misleading information on the School Performance Fact Sheet).

BPPE is currently authorized in its regulations to negotiate with a lender, holder, guarantee agency, or USDE for the full compromise or write-off of student loan obligations to relieve students of economic loss and, if possible, to reduce the liability of the STRF for the payment of claims. The Bureau is also authorized to pay a student's claim directly to the lender, holder, guarantee agency or USDE. At its December 2013 Advisory Committee meeting, regulations were considered to define "third-party payers" as a person, business or agency who pays any portion of an institutional charge on behalf of a student. The proposal further would provide that for a student whose total or partial charges are paid by a third-party payer who suffers a loss of an educational opportunity, the portion paid by the third party payer up to the amount of the economic losses may be paid to a subsequent institution upon evidence that a student is enrolled in a different institution.

**Staff Recommendation:** ***The Bureau should update the Committees on its efforts related to school closures and students impacted by school closures. The Bureau should continue to improve its administration of STRF and dedicate staff to ensuring that monies are properly collected, claims are swiftly processed and payouts are made in a timely fashion. The Bureau should update the Committees on its current efforts related to third-party payers and advise the Committees as to any statutory changes that could enhance STRF. The Committees may wish to expand the uses of STRF and evaluate the timelines under which students have to file a claim.***

---

**ISSUE #21: (VETERANS EDUCATIONAL BENEFITS OVERSIGHT.) Millions of dollars in funding administered by the federal Veterans Administration (VA) and Department of Defense (DOD) go to private postsecondary education institutions in California. Should institutions accepting funds administered by the VA and DOD be approved by the Bureau?**

**Background:** The GI Bill, signed in 1944 by President Franklin D. Roosevelt gave "servicemen and women the opportunity of resuming their education or technical training after discharge, or of taking a refresher or retrainer course, not only without tuition charge up to $500 per school year, but with the right to receive a monthly living allowance while pursuing their studies." Educational benefits are currently available both to active duty personnel and veterans through two key programs: the Tuition Assistance program administered and run by the Department of Defense (DOD) and the Post-9/11 Veterans Educational Assistance Act administered by the Department of Veterans Affairs (VA).

According to data from the National Center for Education Statistics, in 2011-12, 11.3 percent of all U.S. service members enrolled in undergraduate education were pursing certificate programs, 42.3 percent were enrolled in associate's degree programs and 46.4 percent were enrolled in bachelor's degree programs. Half of all undergraduates attended school full time, while 32.3 percent attended part time and 17.2 percent mixed full-time and part-time enrollment. The statistics showed that during FY 2011, 923,836 U.S. service members received over $10 billion in assistance from educational benefit programs administered by the VA, with 88.420, or 9.6 percent, living in California.

There have been multiple reports and hearings focused on the experience of veterans at private for-profit institutions. According to a 2010 report issued by the U.S. Senate Health, Education, Labor and Pensions (HELP) Committee, between 2009 and 2010, revenue from military educational benefits at 20 for-profit education companies increased 211 percent. The report also noted that because neither DOD nor VA benefits originate through Title IV, money that institutions received through these programs was not counted as federal financial aid, thus not subject to a key regulatory requirement governing for-profit schools that no more than 90 percent of revenues come from federal financial aid. This so-called "90/10" rule essentially considers DOD and Veterans funds as non-federal aid by allowing these funds to be counted in the 10 percent of the calculation, despite the fact that the money comes from federal taxpayers. The report found that four of the five for-profit schools receiving the most Post-9/11 GI Bill funding in the first year had loan repayment rates of only 31 to 37 percent. The report further found that the same four of five schools receiving the most Post-9/11 GI funding had at least one campus with a student default rate above 24 percent over three years.

For-profit schools have come under particular scrutiny for practices used to recruit military veterans. Recently, Attorney General Kamala Harris filed suit against Corinthian Colleges, Inc. for false and predatory advertising, intentional misrepresentations to students, securities fraud and unlawful use of

military seals in advertisements. According to the complaint, CCI included official Army, Navy, Air Force, Marine Corps and Coast Guard seals in mailings and on Web sites.

The former BPPVE used to serve as the approval agency for California institutions attended by veterans using Title 38 monies under a contract with the VA. When BPPVE expired, these duties were transferred to the California Department of Veterans Affairs (Cal-Vets) which now provides limited oversight of postsecondary education programs through its role as the state approving agency for veterans' education benefits (CSAAVE). CSAAVE is federally funded and operates under an annual reimbursement contract with the VA. In its role as the approval agency, the primary function of CSAAVE is to review, evaluate and approve quality educational and training programs for veteran's benefits. CSAAVE is intended to approve colleges and universities, vocational schools, business schools, professional schools, and licensing and certification training and tests, all of which must lead to an educational, professional or vocational objective. There is no current requirement for CSAAVE to provide recourse for students attending approved institutions and in the event that a student was mislead or unable to become employed following enrollment at a program not approved by BPPE, no ability for the Bureau to take action and no requirement that protections under the Act are upheld.

**Staff Recommendation:** ***The Committees may wish to require that any school in California receiving benefits administered by the VA and/or DOD must be approved by the Bureau and subject to the Act. The Committees may wish to specify that institutions accepting benefits administered by the VA and/or DOD provide students their associated money for living expenses and other costs within the timeframe established under federal law.***

---

**ISSUE #22: (DISCLOSURES, DATA, STUDENT OUTCOMES AND MEASURING STUDENT PERFORMANCE.) Schools are required to provide a substantial amount of information to a number of different agencies, including the Bureau. Schools are also required to provide disclosures and information to students prior to enrollment. There may be instances where data required by one entity is superior to that currently required by the Bureau and opportunities for the Bureau to streamline its processes for data collection.**

**Background:** Many schools regulated by the Bureau are subject to multiple requirements for disclosures from multiple entities and also may be subject to duplicate and conflicting data submissions to multiple regulatory bodies. Schools might be approved by BPPE, overseen by USDE related to the acceptance of Title IV money and overseen by the California Student Aid Commission (CSAC) related to the acceptance of Cal Grant student loans and required to provide information to each as a condition of participation and approval. There appear to be a number of disclosure requirements that can be simplified and streamlined to better provide students the real-time data they need to make informed decisions about enrolling in a particular educational program.

The Act requires a number of disclosures aimed at providing students with the information and tools to make an informed decision about their education. Job placement numbers, license exam passage rates, salary information and cohort default rates are some of the items institutions are required to provide to students as they evaluate whether or not to attend a particular school. (CDR is the percentage of a school's borrowers who enter repayment on federal loans during a particular fiscal year and default or meet other specified conditions prior to the end of the next fiscal year and provided to USDE in draft form, offering schools two appeals before the information becomes "official".) The Act also requires a series of disclosures about unaccredited programs offering degrees, such as whether the degree is

issued in a field that requires licensure in California, whether or not a graduate of the degree program will be eligible to sit for the applicable licensure exam in California and other states, information acknowledging that a degree from an unaccredited institution is not recognized for some employment positions and a statement that students attending an unaccredited institution are ineligible for federal financial aid programs.

The Act also specifies requirements regarding enrollment agreements and requirements that students be provided a school catalog and a School Performance Fact Sheet (Fact Sheet), including minimum requirements and disclosures required in these documents such as information about program completion, placement, licensure and salary of students/graduates. Under the Act, institutions are also required to submit an annual report to BPPE that includes specified information, including the most recent three-year cohort default rate reported by the USDE for the institution and the percentage of enrolled students receiving federal student loans. The Bureau is also authorized ensure that information is useful to students, useful to policymakers, based on the most credible and verifiable data available but also does not impose undue compliance burdens on an institution.

Legislation enacted in 2011 (SB 70, Budget and Fiscal Review Committee) established, as a condition for voluntary participation in the Cal Grant program, that each institution with more than 40 percent of its undergraduate enrollment borrowing federal student loans must have a three-year 2008 cohort default rate less than 24.6% to be eligible for new and renewal Cal Grant awards in the 2011-12 academic year, and less than 30% for each subsequent year. Institutions are also required to annually report to CSAC enrollment, persistence and graduation data for all undergraduate students, including aggregate information on Cal Grant recipients, and the job placement rate and salary and wage information for programs that are designed or advertised to lead to a particular type of job or are advertised with any claim regarding placement.

The Integrated Postsecondary Education Data System (IPEDS) is a system of interrelated surveys conducted annually by the USDE's National Center for Education Statistics. IPEDS gathers information from every college, university, and technical and vocational institution that participates in Title IV, including data reported by programs on enrollments, program completions, graduation rates, faculty and staff, finances, institutional prices, and student financial aid. Information is then made available to students and parents through the College Navigator college search Web site and stored at the IPEDS Data Center. In some instances, it may be appropriate for BPPE approved institutions that also report to IPEDS to have authority to substitute the information required under the Act to be reported to the Bureau with what is already reported to IPEDS, eliminating the requirement for schools to potentially create two data sets and also streamlining and simplifying for potential students to access information. Institutions could still be required to report to BPPE and disclose information to students but the data would look the same as what a student may gather from the College Navigator site and Bureau staff would have to verify that the information is reported correctly.

The 2010 Title IV regulations included a new definition for the means by which eligible schools would have to report "gainful employment" to students. The definition continues to be negotiated at the federal level and the current regulation would evaluate programs for Title IV eligibility based on debt-to-income ratios and CDRs. CDRs would be judged for any program with more than 30 students enrolled, and debt-to-income ratios would be judged for any program with more than 10 students. Programs whose graduates' loan payments comprise more than 30 percent of their discretionary income or 12 percent of their total income would no longer be eligible to receive Title IV monies. Programs with a CDR of more than 30 percent for 3 consecutive years would also no longer be eligible to receive Title IV monies.

In California, the Salary Surfer allows students and the public to see salaries associated with degrees or certificates in specific disciplines. Salary Surfer provides wage data for California Community College (CCC) students who earned an associate's degree or a credit certificate by using the aggregated earnings of graduates from a five year period. Wage information comes from an agreement between the CCC Chancellor's Office and the California Employment Development Department (EDD). The system is a useful tool for students to estimate their potential earnings after receiving a certificate or degree in certain areas.

California is currently without a comprehensive system for higher education planning and coordination. Through data collection, analysis and program review, a higher education coordinating body like the former California Postsecondary Education Commission (CPEC) has the ability to coordinate the long-range planning of the state's higher education systems as a means to ensure that they were working together to carry out their individual missions while serving the state's long-range workforce training, job and economic needs. Private postsecondary education data and student outcomes are an important part of any higher education discussion and in the event that the state creates a coordinating body, information like that received currently by BPPE and CSAC may be appropriate to transmit to that entity.

**Staff Recommendation:** ***The Committees may wish to authorize institutions receiving Title IV financial aid to report IPEDS data and data required under the Gainful Employment regulation to the Bureau on the School Performance Fact Sheet. The Committees may wish to require the Bureau to enter into an MOU with the Employment Development Department to gain access to the type of wage data available on Salary Surfer and as a means of verifying information reported by institutions. The Committees may also wish to require additional disclosures be made to potential students and reported to the Bureau such as information about any legal or administrative actions brought against an institution. The Committee may wish to enhance, simplify or substitute disclosures only in the event that students still receive the maximum amount of information to assist in making informed decisions about enrollment.***

## ISSUE #23: (LAW SCHOOL DISCLOSURES.) Should a law school accredited by the American Bar Association, and owned by an institution operating under the Bureau, be able to satisfy the current disclosure requirements of the School Performance Fact Sheet by instead complying with ABA disclosure requirements; reporting to the National Association for Law Placement; and making completion, Bar passage, placement, and salary and wage data available to prospective students prior to enrollment through the application process administered by the Law School Admission Council?

**Background:** The USDE requirement that an institution have state authorization in order to be eligible for Title IV federal student financial aid is prompting at least one law school in California, exempt from Bureau approval, to seek Bureau approval to maintain Title IV eligibility. As a result, that school will be subject to the Bureau's School Performance Fact Sheet (Fact Sheet) requirements.

At issue is the fact that the Fact Sheet requires different calculations than those established by the American Bar Association (ABA) and National Association for Law Placement (NALP) and may ultimately provide less data to students than they are already provided through the Law School Admission Council (LSAC) application process. Under ABA Standard 509, ABA accredited law

schools are required to provide detailed student enrollment and graduate outcome information to prospective students and to the general public. Law schools also report employment and salary outcomes for graduates to NALP. Prospective students access this data through the law school application process administered by the LSAC. Through the LSAC website, students are provided a single point of entry to access this data in order to make comparative analysis of the law schools to which they are considering applying.

**Staff Recommendation:** ***The Committee may wish to amend the Act to authorize a law school accredited by the ABA, and owned by an institution operating under the Bureau, to satisfy the current disclosure requirements of the Fact Sheet by instead doing the following: complying with ABA disclosure requirements; reporting to the National Association for Law Placement; and making completion, Bar passage, placement, and salary and wage data available to prospective students prior to enrollment through the application process administered by the Law School Admission Council. The Committees may wish to ensure that any specific information required on the Fact Sheet that may help students make informed decisions is also disclosed by a law school under the Bureau's authority.***

---

**ISSUE #24: (PRIVATE RIGHT OF ACTION.) Given the challenges the Bureau faces in its ability to enforce the Act, some have called for the reactivation of a private right of action, granting students the ability to sue schools directly. Is a private right of action better than a robust structure for regulation, as created under the Act, enforced properly and in a timely manner?**

**Background:** The Bureau has a number of options to enforce the Act and take action against institutions in violation of the Act. However, given the previously discussed struggles the Bureau has to meet its enforcement mandates, protect students who have been harmed by schools and investigate complaints in a timely manner, as well as challenges outlined in the BSA report about BPPE's ability to proactively identify and go after unlicensed institutions, students in California may not fully be receiving the benefits of a robust regulatory structure. While the Bureau does have the ability to issue citations and levy fines, as a government agency BPPE is subject to important due process rules and utilizes the AG as its attorney in cases that warrant additional legal action. The AG has a number of sections where dedicated Deputy Attorneys General (DAGs) act as lawyers for state agencies. Cases stemming from DCA entities are typically assigned to DAGs in the AG's Licensing Section, as they involve DCA licensees in violation of their practice act. However, many of the investigations and complaints filed against private postsecondary institutions by the AG on behalf of consumers, such as the recent case against Corinthian Colleges, Inc, are typically handled by the Consumer Law Section. BPPE could greatly benefit from working directly with DAGs with specific experience and knowledge about the Act and regulating private postsecondary institutions in California. Given its large amount of financial resources, the Bureau could potentially augment AG resources to ensure timely resolution of student cases.

It would be helpful for the Committees to learn more about how BPPE cases are processed, handled and acted upon by the AG, as well as typical timelines for final resolutions and the number of students impacted by these types of actions against schools.

**Staff Recommendation:** ***The Committees should not amend the Act to include a Private Right of Action. It does not appear as if a Private Right of Action would be in the best interest of students in***

***regulating private postsecondary institutions. Instead, the necessary improvements to provide for a more robust regulatory structure and coordination more fully with the AGs office in pursuing legal action against schools which violate the Act should be an immediate priority. The Committees should also ensure that the DAGs most familiar with consumer protection in California are assigned cases referred by the Bureau.***

## *TECHNICAL CLEANUP*

**ISSUE #25: (TECHNICAL CHANGES MAY IMPROVE EFFECTIVENESS OF THE ACT AND BPPE.) There are a number of amendments to the Act that are technical in nature but may improve Bureau operations and the enforcement of the Act.**

**Background:** Identified instances where technical clarification may be necessary:

- References in the Act to School Performance Fact Sheet but to Fact Sheet in the Bureau's regulations.
- Obsolete references to CPEC throughout the Act.
- Obsolete references to BPPVE throughout the Business and Professions Code.

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

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

**ISSUE #26: (SHOULD THE BPPE BE CONTINUED?) Should the licensing and regulation of private postsecondary institutions and maintenance of important consumer and student protections be continued and be regulated by the current BPPE?**

**Background:** The Bureau struggles to meet its statutory mandate for consumer protection and robust oversight of private postsecondary institutions. Yet its challenges related to providing oversight of institutions do not appear to stem from problems with the law or financial insolvency or staff bias, issues that consistently arose with the Former Act and BPPVE, but rather appear to be directly related to the implementation of the Act by BPPE at DCA. From staffing, to implementing policies and procedures, to data systems, to timelines, to processing student complaints, to leadership, the Bureau, after almost 15 years of operation, has not been able to properly evaluate and approve schools and programs and adequately protect students. BPPE collects millions of dollars from institutions it licenses, but does not have the infrastructure in place to do a good job of regulating these institutions. The Bureau was not funded or operational until well after it was established. BPPE has had three Bureau Chiefs in four years. BPPE pays millions of dollars of Pro Rata as a Bureau within DCA, but does not receive near the level of services, personnel or support it needs to effectively do its job. Given the large amount of money it has in its fund, the Bureau could easily afford to hire multiple program quality experts, outside consultants, lawyers, investigators and information technology personnel. BPPE also has an incredibly strong Advisory Committee comprised of individuals familiar

with many aspects of private postsecondary regulation that it does not effectively utilize, and may be limited in its ability to utilize given its structure as a Bureau responsible for licensing educational institutions housed within an agency where the majority of other programs are focused on individual professional licensees.

Private postsecondary institutions play an important role in higher educational opportunities for California and are increasingly considered an additional segment of higher education providers throughout the state and nation, as evidenced in attempts to ensure student outcomes are reported much like they are for public institutions and that accountability measures are in place much like they are for public institutions, given the large amount of public funding these private institutions receives. California's other higher education segments, the University of California, California State University and California Community Colleges are all subject to oversight provided by independent boards. These entities are not subject to a sunset provision and the threat of possibly expiring.

After numerous audits, analyses by outside agencies like the LAO, an in-house monitor for two years, multiple legislative investigations and significant public comment, it has become abundantly clear that the bureau structure at DCA for oversight of private postsecondary institutions does not work. An independent board structure would allow for increased public accountability and could provide clear direction to a regulatory entity about its functions, operations, priorities and organization, providing inherent leadership and a clear path to fulfill its mission through the transparent decision making process undertaken by board members, in compliance with public meeting requirements.

**Staff Recommendation:** ***The Committees should seriously consider reconstituting the Bureau as an independent board comprised of members from the following categories: students who are or have attended schools regulated under the Act; individuals with a record of advocacy on behalf of consumers; representatives of private postsecondary education institutions; employers that hire institution graduates and; members of the public. Strong consideration should be made to include current Advisory Committee members as members of an independent board.***