

# **BACKGROUND PAPER FOR The Bureau for Private Postsecondary Education**

**(Joint Oversight Hearing, March 28, 2016, Senate Committee on Business, Professions and Economic Development, Senate Committee on Education, Assembly Committee on Business and Professions and Assembly Committee on Higher Education)**

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

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## **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 or Bureau) 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 foundation for oversight and gave the BPPE enforcement tools to ensure schools comply with the law.

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 establishes prohibitions on false advertising and inappropriate recruiting and 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 provides 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; and,
- Ensure that all stakeholders have a voice and are heard in the operations and rulemaking process of BPPE.

BPPE is also tasked with actively investigating and combatting unlicensed activity, administering the Student Tuition Recovery Fund (STRF), and conducting outreach and education activities for students and private postsecondary educational institutions within the state.

Private and for-profit higher education institutions are in a position to play an important role in providing access and education for students. The challenge for the Legislature is to establish an oversight structure that supports innovative programs but prevents predatory practices.

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.*

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 14 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; one public member appointed by the Speaker of the Assembly and; two nonvoting, ex officio members, the chair of the Assembly policy committee with jurisdiction over legislation relating to the bureau or designee appointed by the Speaker of the Assembly and the chair of the Senate policy committee with jurisdiction over legislation relating to the bureau or designee appointed by the Senate Committee on Rules. The Advisory Committee is required to meet at least quarterly and appoint a member to represent the Committee for purposes of communicating with the Legislature.

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

<i>Name and Short Bio</i>	<i>Appointment Date</i>	<i>Term Expiration Date</i>	<i>Appointing Authority</i>	<i>Type</i>
<b>Shawn Crawford, Chair</b> 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. Mr. Crawford earned a J.D. from the University of Pittsburgh School of Law, and a B.A. from Allegheny College.	2/10/2010	N/A	DCA Director	Institutional Representative

<i>Name and Short Bio</i>	<b>Appointment Date</b>	<b>Term Expiration Date</b>	<b>Appointing Authority</b>	<b>Type</b>
<p><b>Margaret Reiter, Vice Chair</b> Ms. Reiter was a consumer investigator with the 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.</p>	3/10/2010	N/A	Senate Committee on Rules	Consumer Advocate
<p><b>Diana Amaya</b> Ms. Amaya is Programs and Policy Associate for Hispanas Organized for Political Equality (HOPE). She previously served as Program Lead for Celerity Educational Group, a nonprofit organization that serves Los Angeles-area schools, children, and families. She is a member of Hermanas Unidas de UC Berkeley.</p>	2/4/2015	N/A	Senate Committee on Rules	Public
<p><b>Tamika Butler</b> Ms. Butler is the Executive Director of the Los Angeles County Bicycle Coalition. She received her J.D. in 2009 from Stanford Law School and in 2006 received her B.A. in Psychology and B.S. in Sociology in her hometown of Omaha, Nebraska. Ms. Butler currently serves as the co-chair of the National Center for Lesbian Rights Board of Directors, serves as the Institute Co-Director of the New Leaders Council - Los Angeles, and is an advisory board member for the Legal Aid Society-Employment Law Center's Fair Play for Girls in Sports program.</p>	2/23/2013	N/A	Speaker of the Assembly	Public
<p><b>Mitchell Fuerst</b> Mr. Fuerst is the President of Success Education Colleges, a system of allied health colleges based in the Los Angeles and Las Vegas areas. Mr. Fuerst serves on various corporate boards, has lectured extensively, and is involved with numerous philanthropic organizations. He is a past President of the California Association of Private, Postsecondary Schools (CAPPS) and is a member of the Young Presidents Organization. Mr. Fuerst is a graduate of the California Polytechnic University, Pomona with a Bachelor of Science degree in Business Administration.</p>	1/26/2010	N/A	DCA Director	Institutional Representative

<i>Name and Short Bio</i>	<b>Appointment Date</b>	<b>Term Expiration Date</b>	<b>Appointing Authority</b>	<b>Type</b>
<p><b>State Senator Jerry Hill</b>            State Senator Jerry Hill was elected to the California Senate in November 2012. He was the mayor of the city of San Mateo, served on the San Mateo County Board of Supervisors and was a member of the state Assembly. He serves as the chair of the Senate Committee on Business, Professions and Economic Development, the Subcommittee on California’s Innovation, Technology and Life Sciences Economy, and the Subcommittee on Gas, Electric and Transportation Safety. He grew up in the Bay Area helping his father run his small business. Senator Hill still owns that business, which provides jobs to local residents. He attended public schools, graduated from UC Berkeley and has a teaching credential from San Francisco State University.</p>	6/17/2015	N/A	Senate Committee on Rules	Ex Officio
<p><b>Katherine Lee-Carey</b>            Ms. Lee-Carey is a Special Counsel in the Education practice group and is a member of Cooley LLP’s Business department. She has extensive experience in the development and implementation of policy priorities at the federal and state levels, and in accreditation and licensing matters. She serves on the CAPPS Board of Directors. Ms. Lee Carey received a JD from the University of Denver College of Law and a BA, magna cum laude, from Siena College. She is admitted to practice in California, Colorado, and Arizona.</p>	1/25/2010	N/A	DCA Director	Institutional Representative
<p><b>Ken McEldowney</b>            Mr. 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. He graduated with a BA in Political Science from the University of Michigan and completed graduate work in economics. Mr. McEldowney is a past president of the Consumer Federation of America—a federation of nearly 300 pro-consumer organizations with more than 50 million individual members.</p>	1/25/2010	N/A	DCA Director	Consumer Advocate

<i>Name and Short Bio</i>	<b>Appointment Date</b>	<b>Term Expiration Date</b>	<b>Appointing Authority</b>	<b>Type</b>
<p><b>Assemblymember Jose Medina</b>            Assemblymember Jose Medina was first elected to the California State Assembly in 2012. Mr. Medina began his second term in the Assembly with an appointment to chair the Assembly Committee on Higher Education. Assemblymember Medina spent many years as a teacher with the Riverside Unified School District, also serving as a member of the Riverside City Teachers Association and as a representative to the state council of the California Teachers Association. He graduated from UC Riverside with a bachelor's degree in Latin American Studies and a master's degree in History.</p>	2/4/2015	N/A	Speaker of the Assembly	Ex Officio
<p><b>Marie Roberts De La Parra</b>            Ms. Roberts De La Parra is the founder and principal of BMBCP, a socially responsible, Build It Green certified company with a focus on developing 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. Ms. De La Parra sits on multiple boards and councils that help the advancement of small businesses with contracting opportunities.</p>	1/25/2010	N/A	DCA Director	Past Student
<p><b>Patrick Uetz</b>            Col. 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. Col. Uetz also has served as adjunct faculty at several military justice schools. He earned his BA from Albion College, a JD from University of Toledo College of Law, and an LLM from USD School of Law.</p>	2/26/2013	N/A	Speaker of the Assembly	Consumer Advocate

<i>Name and Short Bio</i>	<b>Appointment Date</b>	<b>Term Expiration Date</b>	<b>Appointing Authority</b>	<b>Type</b>
<b>David Wood</b> Mr. Wood serves as a Loss Prevention/ Risk Manager for Outdoor and Action Sports at VF Corporation where he is responsible for the development of the loss prevention and risk program, as well as the design and implementation of a security and safety program for a large distribution center. He is a member of the Advisory Committee to the Institute of Technology, a Bureau approved institution with locations in California and Oregon where he assists in ensuring that the school's curriculum is current, relevant and meets industry standards and needs, specializing in the areas of criminology and emergency response management. Mr. Wood has a B.A. from Ashford University.	2/18/2015	N/A	DCA Director	Past Student
<b>(Vacant)</b>		N/A	DCA Director	Employer
<b>(Vacant)</b>		N/A	DCA Director	Employer

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. BPPE also highlights its attendance at events such as college fairs in its Sunset Report as one of the methods the Bureau informs students about the Bureau and Bureau resources. The Bureau holds workshops to help educate institutions about licensing and compliance with the Act.

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 and, as of this past fall, the website lists schools that were denied approval to operate.

### **Fiscal, Fund and Fee Analysis**

BPPE is funded through regulatory fees and license fees. At the end of FY 2014/15, BPPE reports that it had a reserve balance of 7.3 months but projects to have a fund reserve of 2.7 months at the end of FY 2015/16. The majority (84.2 percent) of BPPE's revenue comes from a 0.75 percent 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 but slated to be paid back in FY 2016.17. The following is the past, current and projected fund condition of BPPE:



<b>Fund Condition</b>						
(Dollars in Thousands)	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17
Beginning Balance	\$6,473	\$8,350	\$10,548	\$11,482	\$9,446	\$3,730
Revenues and Transfers	\$10,696	\$9,928	\$9,863	\$9,371	\$9,619	\$9,632
<b>Total revenue</b>	\$10,696	\$9,928	\$9,863	\$9,371	\$9,619	\$9,632
Budget Authority	\$7,295	\$8,147	\$9,507	\$11,440	15,515	\$16,046
Expenditures*	\$5,835	\$7,731	\$8,949	\$11,387	\$15,535	\$16,065
Loans to General Fund	-\$3,000	\$0	\$0	\$0	\$0	\$0
Accrued Interest, Loans to General Fund	TBD	TBD	TBD	TBD	TBD	TBD
Loans Repaid From General Fund	\$0	\$0	\$0	\$0	\$0	\$3,000
<b>Fund Balance</b>	\$8,334	\$10,547	\$11,462	\$9,446	\$3,550	\$213
<b>Months in reserve</b>	12.9	14.1	12.1	7.3	2.7	0.2

\*Expenditures may exceed budget authority because they include direct draws from the State Controller's Office.

According to BPPE in its Sunset Report, enforcement expenditures accounted for 44 percent of expenditures, licensing expenditures account for 22.5 percent of the Bureau's budget and Administration represents 13.7 percent of expenditures for FY 2014/15.

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. DCA Pro Rata accounted for 19.9 percent of BPPE expenditures in FY 2014/15.

The Bureau's fees have not changed since the Act was established in 2009. In a March 2015 letter to the Legislature, the Director of the DCA noted that "the Bureau is undergoing a major change of operations and staffing levels...Based on the unpredictable nature of implementation, it would be premature to recommend a change to the fee structure at this time." The Advisory Committee discussed the current fee structure at an August 2015 meeting and again at a November 2015 meeting. At its February 2016 Advisory Committee meeting, the Bureau indicated it is in the process of contracting to have a fee audit conducted "as a means of making decisions moving forward" and expects that to be complete in early May 2016. The Bureau's fund is discussed further in Issue #5.

### **Staffing Levels**

BPPE's organizational structure currently includes a Licensing Unit; an Administrative Unit which handles Student Tuition Recovery Fund (STRF) administration, school closures, outreach, human resources, budgets and fees, public records and transcripts; a Quality of Education Unit; an Enforcement Section comprised of a Compliance Unit with a new staff dedicated to annual report review and compliance and; a Complaints and Investigations/Discipline Unit.

The Bureau is currently authorized for 101 positions, an all-time high since the Bureau was established in 2010. Responding to a report issued by the California State Auditor (Auditor) in 2014 and the prior

sunset review of the Bureau, both noting the inadequacy of staffing levels and related significant delays in BPPE meeting its statutory mandates, the Bureau contracted with CPS HR Consulting Services (CPS) to conduct an independent review of the Bureau's staffing resources needs and requirement. The CPS report confirmed that the Bureau continued to face significant backlogs and was in need of additional staff. The initial CPS report evaluated processes at the Bureau from March 2014 to February 2015. That report found that the Bureau was understaffed by 61.6 positions for its first three years of operation and calculated the need for 49 additional positions over the next five years for the Bureau to reduce backlogs and become current in its work.

The Bureau's contract with CPS later included recommendations aimed at bringing about efficiencies in Bureau processes and also reevaluated personnel and staffing needs based on these revised processes. That final report, issued in July 2015, recommended that the Bureau needed to convert limited term positions to permanent full time for a total of seven Administrative Unit staff; needed an additional 12.5 staff in the Licensing Unit (two vacant positions to be filled and 10.5 additional positions authorized) for a total of 27.5 staff; needed to eliminate one currently allocated limited term education specialist position but add one office technician position in the Quality of Education unit for a total of seven staff; needed an additional 15.5 staff in the Compliance Unit (three vacant positions to be filled and 12.5 additional positions authorized) for a total of 28.5 staff; needed five additional staff in the Complaints Unit (one vacant position filled, two vacant positions eliminated and six additional positions authorized) for a total of 21 staff; one additional position (a newly authorized position) in the Discipline Unit for a total of three staff and; one additional staff (filling a vacant position) in the STRF Unit for a total of 2.4 staff.

The Governor's proposed budget for FY 2015/16 requested 15 new positions for the Bureau (ten permanent and five limited-term) to implement SB 1247 (Lieu, Chapter 840, Statutes of 2013), the bill stemming from the prior sunset review of the Bureau that included a number of programmatic enhancements and key policy reforms. Specifically, the budget included authority for five positions to review accreditation plans for previously unaccredited degree-granting institutions, three permanent positions to review license applications for previously unregulated institutions that participate in veterans' financial aid programs and the remaining seven positions to perform a variety of activities, such as investigating claims associated with the expanded eligibility for STRF and implementing changes to the Bureau's website. The Governor's proposal also included funding for staff training and a study to review reporting requirements for private postsecondary institutions. The Governor's May revision subsequently requested to increase expenditure and position authority and convert limited-term positions to permanent for FY 2015/16 through a spring budget change proposal request, based on the initial CPS report.

### **Licensing**

The Bureau has oversight for all the non-exempt, private postsecondary institutions with a physical presence in California. Currently the Bureau has 650 institutions with full approval and 431 institutions approved by means of accreditation, including 1,081 main campus locations, 422 branch locations, and 428 satellite locations.

For institutions subject to BPPE authority, the Licensing Unit reviews applications for initial approval and renewal of approval to operate, as well as requests for changes in the operations of approved institutions such as a change of ownership, the addition of a location or the addition of an educational

program. The licensing process begins with an application submitted to BPPE which requires, for unaccredited institutions, 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. Institutions seeking approval by means of accreditation are only required to provide contact, ownership, and certified accreditation information. Compliance with the Act is not verified at the time of licensure for schools approved by means of accreditation.

The Licensing Unit began providing application workshops in February 2014 once a month, intended to increase the quality of applications at the time of initial submission which may then lead to decreased time frames for the Unit to have to work with applicants to ensure complete applications. For unaccredited institutional applications, the Quality of Education Unit reviews an applicant's educational programs. An institution may be a college, university or vocational institution whose educational programs, mission and objectives, faculty, curriculum, instruction and distance education programs are evaluated.

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 also verify that financial data submitted was overseen by a certified public accountant. In addition, staff perform internet searches to determine if the applicant institution is operating or has operated in another state. School approval renewal occurs every five years. Institutions are subsequently 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.

The Bureau states that it approves about 100 new institutions and about 125 renewals annually. BPPE has established performance targets for its licensing program to review and approve complete applications within 30 days of receipt. The Bureau has yet to meet this target. While the Bureau has implemented changes in its internal policies and processes and reduced its backlog 35 percent since January 1, 2015, the Bureau states that it estimates the current backlog will not be eliminated until July 1, 2018. As of January 2016, the Bureau currently has 569 applications pending: for initial applicants, 44 are pending, 103 are under review and 17 were denied; for renewals, 82 are pending, 102 are under review and 18 were denied; for non-substantive changes, 61 are in process and 142 are complete; for substantive changes, 142 are in process, 14 are pending and 15 were denied. For a school that is accredited, BPPE reports that it takes on average, from time of receipt of an initial application for approval to completion, 437 days. For a school that is not accredited, it takes 1220 days on average for completion. The oldest application from an institution that is not accredited dates back to October 2014 while the oldest application for renewal from an unaccredited institution is from October 2012.

## **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 (School Performance Fact Sheet, Catalog) format. BPPE then works with DCA's Office of Information Systems to upload the Annual Report spreadsheet, summary reports, and the supplementary documents to the Bureau's website. A new Annual Reports Unit was created in late 2015 designed to monitor institutions' submission of annual reports and perform a comprehensive review of the information and documents provided. BPPE sees this as a key task for the BPPE to determine how to prioritize its compliance inspections. Compliance is discussed further in Issue #12.

Accepting, processing and acting on complaints from students is one of the key mechanisms by which BPPE 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. 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. BPPE notes that staff also benefit from American River College's Regulatory Investigative Techniques Course, National Certified Investigator and Inspector Training (NCIT), DCA's SOLID courses and internal training. In addition, the Bureau contracts with the Office of the Attorney General (AG) pursuant to SB 1247 in order to train staff in areas such as complaint investigation, evidence gathering, report writing and courtroom testifying. Prior to SB 1247, the Bureau utilized the DCA's *Complaint Prioritization Guidelines for Health Care Agencies*.

The timely processing of complaints provides BPPE with critical information about their licensees and assists in prioritizing workloads. BPPE has historically faced significant delays in the time it takes to process complaints. SB 1247 (Lieu, Chapter 840, Statutes of 2014) established important reforms related to the Bureau's complaints processing timeline and procedures to prioritize complaints based on potential harm to students and consumers.

The Bureau reports that the average time to close a complaint has increased over the past four fiscal years.

<b>Complaint Investigations</b>	<b>2014 Calendar Year</b>	<b>2015 Calendar Year</b>
Complaints Received	798	852
-Internally generated	29%	23%
-External	71%	77%
Complaints Closed	642	808
Average Days to Close	323.85	372.09

<b>Pending Complaints</b>	<b>2014 Calendar Year</b>	<b>2015 Calendar Year</b>
Total Pending	1014	1045
-Internally generated	28%	32%
-External	72%	68%

BPPE states that it utilizes cite and fine authority to address violations of the law that do not warrant formal disciplinary action. Fine amounts range from \$50 to \$5,000, except for unlicensed activity, where a fine can be up to \$50,000. BPPE has four classes of citations:

- Class A (one that the Bureau determines is more serious in nature, typically resulting in a fine ranging from \$2501 to \$5000)
- Class B (one that the Bureau determines is less serious in nature but may still include a violation that could result in student harm, typically resulting in a fine ranging from \$1001 up to \$2500). A Class B violation may be issued to an institution that has committed one or more prior, separate Class C violations.
- Class C (one that the Bureau determines is minor or technical that may be directly or potentially detrimental to students or potentially impacts their education, typically resulting in a fine ranging from \$501 to more than \$1000)
- Class D (one that the Bureau determines to be minor or technical violation which is neither directly or potentially detrimental to students nor potentially impacts their education, typically resulting in a fine ranging from no less than \$50 to no more than \$500)

Complaints are discussed further in Issue #14.

The Bureau reports that five most common violations for which citations are issued are failure to meet minimum requirements of the School Performance Fact Sheet, failure to meet minimum requirements for the School Catalog, failure to meet minimum requirements for the Enrollment Agreement, not being approved to operate and failing to collect and/or submit STRF assessments.

Citations	2014 December Month End	2015 December Month End
Citation Referrals Received	28	12
Citations Issued	16	167
Citations Pending	20	18
Informal Conferences Requested	12	72

The Bureau reports that for FY 2012/13 through 2014/15, it has held 56 informal office conferences, 76 citations were appealed and 22 administrative hearings were requested. The average fine amount pre-appeal is \$38,368.00 and post appeal is \$15,493.00.

Discipline	2014 December Month End	2015 December Month End
Accusations Pending	3	7
Accusations Withdrawn	0	1
SOIs Pending at OAG (total)	41	44
SOIs Withdrawn	11	16
Informal Hearing Requests	*see below	1
Decisions	4	10
Mitigation Packets rec'd from OAG	*see below	33
Appeals Received	*see below	31
Accusations Referral Received* <i>*Referral from Investigations Unit</i>	*see below	7
Accusations sent to OAG	*see below	7
Informal Hearing Requests sent to DAG	*see below	7
SOIs sent to AG	*see below	34

\*not captured in 2014

## **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. 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. STRF is discussed later in Issue #15.

## **RECENT LEGISLATIVE HISTORY AND PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS**

The Bureau was last reviewed by the Senate Committee on Business, Professions and Economic Development, Senate Committee on Education, Assembly Committee on Business, Professions and Consumer Protection [now Assembly Business and Profession] and Assembly Committee on Higher Education (Committees) in 2013-14. At that time, the committees identified 26 issues for discussion. The Bureau's sunset date was only extended for two years because of serious concerns raised by the Committees during its review.

In December 2015, the Bureau submitted its required sunset report to the Committees. In this report, the Bureau described actions it has taken since its prior review to address the recommendations made. The following are some of the more important programmatic and operational changes, enhancements and other important policy decisions or regulatory changes made. Since the Bureau's last review there have also been a number of actions by the Legislature that amend the Act and impact BPPE's operations, which are also outlined below. For those issues which were not addressed and which may still be of concern to the Committees, they are addressed and more fully further under "Current Sunset Review Issues."

- **Some Staffing Issues Are Being Addressed.** The Committees were concerned that the Bureau faced significant delays in processing applications for approval, closing complaints, processing STRF payments and performing compliance inspections, despite having a healthy reserve in its fund. The Bureau historically faced staffing shortages due to Budget delays, hiring freezes and other challenges and at the time did not appear to have a plan for eliminating backlogs. In response to the Committees' request for information about staffing needs, the Bureau contracted with CPS, as outlined above, which provided snapshot of current Bureau workforce needs and recommendations for additional staff. The Bureau received authority to hire additional staff and reorganized some of its units in an attempt to achieve workload and processing efficiencies.

The Committees also recommended that the Bureau acquire additional, experienced investigative staff, in the appropriate classifications to effectively process complaints. The Committees also advised the Bureau that staff should receive more training in areas like evidence-gathering techniques and knowledge about when they have sufficient evidence to advance or close complaints. Pursuant to SB 1247, Bureau staff is now required to be trained by the AG's office and trainings are happening. The Bureau notes that it is also working to ensure that all staff understand the Act and is developing training to ensure that sufficient evidence is gathered during investigations.

- **The Advisory Committee makeup has been improved and now meets more regularly.** The Committees were concerned that by not maximizing the role of Advisory Committee members and their collective experience operating and dealing with institutions, the Bureau was missing key opportunities for guidance and assistance in implementing the Act. The Committees recommended that the Bureau consult Advisory Committee members more frequently and provide additional opportunities for Advisory Committee meetings to better include public dialogue. SB 1247 made a number of improvements to the Advisory Committee, including:

- adding the chairs of the policy committees of the Senate and Assembly with jurisdiction over legislation relating to the Bureau as ex-officio, non-voting members of the Advisory Committee
  - prohibiting a public member of the Advisory Committee from having an interest in any institutions regulated by the BPPE, as specified
  - expanding the Advisory Committee functions to include the examination of the oversight functions and operational policies of the BPPE, specifically, the fee schedule and the equity of the schedule relative to the way institutions are structured, and the licensing provisions of the Act
  - requiring the Advisory Committee to make recommendations with respect to policies, practices, and regulations relating to private postsecondary education, and provide any assistance as may be requested by the BPPE
  - requiring the Bureau to seek input from the Advisory Committee prior to the adoption, amendment, or repeal of its regulations and take comments into consideration and provide feedback to the Advisory Committee members
  - requiring the Bureau Chief to attend all Advisory Committee meetings and designate ongoing support staff and requiring the DCA Director to personally attend, and testify and answer questions at, each meeting of the Advisory Committee
  - requiring the Advisory Committee to have the same access to records within the DCA related to the operation and administration of the Act as do members of constituent boards of the DCA in regard to records related to their functions
  - requiring Advisory Committee meetings to be subject to the Bagley-Keene Open Meetings Act and for meeting materials to be posted on the internet
  - requiring the Advisory Committee to meet at least quarterly and to appoint a member of the committee to represent the committee for purposes of communicating with the Legislature
  - requiring DCA to review, and revise if necessary, the conflicts of interest regulations to ensure that each Advisory Committee member is required to disclose conflicts of interest to the public
- **Regulations are in the works to address issues related to English language training programs.** The Committees noted that while many English Language Training Programs (ELTPs) provide foreign students in the United States with non-vocational English language instruction, including preparation for English proficiency exams, not all schools are solely offering this type of educational opportunity and may look more like traditional training institutions regulated by the Bureau. The Committees did not make statutory changes to ensure that ELTPs are exempt from the ACT but directed the Bureau to provide an update on



continued outreach and communication with ELTPs solely offering ESL programs that are also subject to the requirements established by the federal Department of Homeland Security student and exchange visitor program. The Bureau is continuing to work on this issue, including having conversations about what regulations may be necessary to clarify how the Bureau recognizes these programs.

- **BPPE dispatched staff to school sites when the institutions abruptly closed and is providing students of closed schools transcripts more efficiently than in the past.** The Bureau faced its largest school closures to date with the abrupt shutdown of Corinthian Colleges, Inc. in April 2015 and Marinello Schools of Beauty in February 2016. CCI was the subject of a formal complaint by the federal Consumer Financial Protection Bureau and also faced a series of legal actions and investigations into unlawful practices, including by 20 state attorneys general, several federal agencies, and the United States Department of Education (USDE) but continued to operate and enroll new students at WyoTech (3 campuses), Everest (11 campuses), and Heald (10 campuses) campuses throughout California. CCI closed all campuses in April 2015 and filed bankruptcy on May 4, 2015. Marinello Schools of Beauty was accused by USDE of knowingly requesting federal financial aid for students without a valid high school diploma, underawarding some student funds, charging fees to students who took too long to finish programs and other acts of misrepresentation. The school shut down in February, including the abrupt closure of its 39 California campuses.

In response to these shutdowns, the Bureau dispatched staff to the campuses to meet with students and make them aware of STRF and provide information about how to request transcripts. BPPE reported that despite receiving 200-250 requests for transcripts per day at the peak, students are able to receive these important records with just a 24 hour turnaround. The Bureau states that it now receives about 35 requests for transcripts per day. Outreach by the Bureau is discussed further in Issue #2.

- **Law school disclosures are consistent.** Responding to concerns that a law school operating under the Bureau and also accredited by the American Bar Association could be providing prospective students two different sets of data, SB 1247 clarified that these institutions could satisfy disclosure requirements of the School Performance Fact Sheet by 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.
- **Legislation impacting Bureau operations**

AB 752 (Salas, Chapter 560, Statutes of 2015) required the Bureau to review, by July 1, 2016, the examinations for ability-to-benefit students prescribed by the United States Department of Education. As part of this review, the Bureau is required to determine whether the examinations are appropriate for ability-to-benefit students who possess limited English proficiency and approve an alternative examination if the Bureau decides the examinations are inappropriate. This issue is discussed later in Issue #2.

SB 81 (Committee on Budget and Fiscal Review, Chapter 22, Statutes of 2015) included numerous statutory changes intended to implement the Budget Act of 2015 related to postsecondary education. Among those changes is a provision that allows the Bureau to enter into a contract with any independent institution of higher education, as defined, to review and act on student complaints against the institution. This issue is discussed later in Issue #6.

AB 2099 (Frazier, Chapter 676, Statutes of 2014) stipulated new Title 38 veterans funding eligibility standards for postsecondary institutions in California. All institutions now must provide license examination passage rates to students, and institutions that offer degrees must have institutional and programmatic accreditation in order to receive Title 38 monies. The bill also provided that, in order for a postsecondary institution to be determined eligible to accept Title 38 monies, determined by CSAAVE, the postsecondary institution, whether it offers degrees or not, must either be a public school, a nonprofit school, approved by the Bureau or be regionally accredited. This issue is discussed later in Issue #3 and Issue #8.

SB 845 (Correa, Chapter 120, Statutes of 2014) required the Board of Governors of the California Community Colleges and Trustees of the California State University, and requests the Regents of the University of California and governing bodies of accredited private postsecondary educational institutions, to develop model contracts to be used when negotiating with financial institutions to disburse student financial aid awards and refunds.

## **CURRENT SUNSET REVIEW ISSUES**

The following are unresolved issues pertaining to BPPE, or areas of concern for the Committees to consider. There are also recommendations the Committees' 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.

### **BPPE ADMINISTRATION ISSUES**

**ISSUE #1: (OUTDATED TECHNOLOGY SYSTEMS AND THE IMPLEMENTATION OF BreEZe.)** The Bureau uses a woefully outdated data system and there are no solid plans to upgrade Bureau Information Technology (IT) systems. The DCA and Bureau have acknowledged that an interim plan is being designed, until long-term needs are identified and addressed, but the details of the plan are unclear.

**Background:** The DCA has been working since 2009 on replacing multiple antiquated standalone IT systems with one fully integrated system. In September 2011, the DCA awarded Accenture LLC with a contract to develop and implement a commercial off-the-shelf customized IT system, which it calls BreEZe. BreEZe is intended to provide applicant tracking, licensing, renewals, enforcement, monitoring, cashiering, and data management capabilities. In addition, BreEZe is web-enabled and designed to allow licensees to complete and submit applications, renewals, and the necessary fees through the internet. The public also will be able to file complaints, access complaint status, and check licensee information if/when the program is fully operational.

The project plan called for BreEZe to be implemented in three releases. The first release was scheduled for July 2012. The Bureau was originally scheduled for inclusion in Release 3 of the project. Under Special Project Report 3.1, which outlined the changing scope and cost of the BreEZe project, Release 3 was removed from the project entirely in 2015. DCA currently has no formal plan to expand BreEZe to the 19 boards originally included in Release 3. Instead, DCA first intends to conduct a cost-benefit analysis for Release 3 boards (after Release 2 is completed in 2016) and then make a decision about whether programs previously slated for Release 3 of the project will come onto BreEZe and, if so, how that will be implemented. It is not clear whether the system has been evaluated to meet the needs of Release 3 entities like the Bureau, many of which are facing significant operational challenges due to their lack of dynamic IT capacity. At the end of FY2015/16 the Bureau had contributed a total of \$9,804 towards this upgraded system.

BPPE currently utilizes a different database than the majority of DCA entities that rely on the Consumer Affairs System (CAS) or BreEZe. Schools Automated Information Link, or SAIL, is another system the Bureau uses to manage data, licensing, complaints and enforcement tools but is outdated and flawed. These systems do not allow BPPE to manipulate data and do not track basic information like enforcement actions and timelines. The Bureau has a series of manual workarounds like excel spreadsheets to track important information. The Committees and the Auditor were concerned during the prior sunset review that 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. SAIL historically also contained flawed files, such as the same complaint listed under

two unique identifiers, as the Auditor found, and it is unclear how potentially problematic data will be reconciled to be part of a new, functional system that may ultimately be available to the Bureau.

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 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 is also the record keeper of last resort in the event of a school closure, and responsible for maintaining the school files and important student records like transcripts and enrollment agreements for closed schools. During the closure in 2015 of CCI, the ability for the Bureau to access electronic records provided by CCI was a significant problem and may have served as a barrier to students receiving important records as soon as possible.

At the Bureau's November 2015 Advisory Committee meeting, the DCA Director reported that there would be a new IT system in place by early 2016 to help the Bureau prioritize complaints and compliance inspections. The Director's December 2015 report to the Legislature also advised that BPPE is working with a vendor to develop "the requirement specification and business flow documentation for an upgrade to the existing system for institutional submission and Bureau processing of each institutional Annual Report" and that by early 2016, the Bureau will have new software to organize "prioritization data" and by the end of 2016 will have a process regarding prioritization.

It would be helpful for the Committees to understand what the plan is moving forward for the Bureau and any IT upgrades, including the status of interim solutions. It would also be helpful to understand, particularly given the Bureau's fiscal issues as discussed later, what future costs are anticipated.

***Staff Recommendation:*** *The DCA and Bureau should advise the Committees on the status of Bureau IT systems and upgrades, including any temporary workaround systems currently in place and the cost for these systems. The DCA and Bureau should advise the Committees on the status of the cost-benefit analysis for BreEZe feasibility for the Bureau and provide information about how the Bureau's IT needs are being evaluated.*

**ISSUE #2: (OUTREACH.)** **The Bureau has focused significant efforts to provide outreach to schools, including new workshops to assist with application completion and web-based tools to allow institutions to better understand how they can be compliant with the Act and Bureau regulations. The Bureau does not appear to focus similar efforts on student outreach to inform students about the Bureau's work and available recourse for students.**

**Background:** Legislative intent outlined in the Act specifically references "meaningful student protections through essential avenues of recourse for students" and "prevention of the harm to students and the deception of the public that results from fraudulent or substandard educational programs and degrees" in continuing the operation of the Bureau and Act. The Bureau is also required, under Education Code Section 94879, to "conduct an outreach program to secondary school pupils as well as prospective and current private postsecondary students, to provide them with information on how best to select a private postsecondary institution, how to enter into enrollment agreements, how to make

informed decisions in the private postsecondary education marketplace and how to contact the Bureau for assistance.”

The Bureau has a number of new tools it has employed since the prior sunset review to communicate more directly with schools, including offering workshops once a month to assist institutions in completing applications for approval throughout the state as well as webinars and videos to help schools provide accurate information to the Bureau. These proactive efforts have helped reduce the licensing backlog and are likely a means by which institutions have increased awareness of Bureau requirements and activities.

It does not appear that the Bureau focuses the same effort and resources on proactive outreach to students. The Bureau reports that it attends college fairs with agencies like the California Student Aid Commission (CSAC) which, the Bureau reports, “informs students of the Bureau and the resources available to them from the Bureau”. Based on the large scale closures during the past year and increased exposure to students about BPPE and the Act, it does not appear that students attending Bureau regulated schools are as aware of the Bureau and options available provided by BPPE. Some students may first interact with the Bureau during site visits amidst an abrupt closure of their school and while BPPE staff have been swift in trying to make contact with students at these school sites, it does not appear that the Bureau utilizes student information collected in a proactive way to then continue communicating with students about their options for recourse. Staff provides students STRF applications during these school closure visits but the onus is then on students to contact the Bureau again for additional follow up. While BPPE reported during the CCI closure that it made contact with almost 80 percent of Wyotech and Everest students who would be STRF eligible, it has received around 300 applications. BPPE also reports that it has received over 10,000 calls related to the CCI closure and while the Bureau notes that it documents student contact information for students who attended schools under the Bureau’s jurisdiction, it does not appear that contact information is tracked for all students who contact BPPE.

The Committees were concerned about providing a simple, streamlined process to students in the wake of a school closure and proposed in AB 573 (Medina, 2015) first a closed schools task force and then a single state point of contact to lead the synchronization of other state agencies with a role in assisting students, monitoring regulatory efforts at the state and federal level and in a position to work with partner agencies to establish key criteria for determining the appropriate steps the state should take to protect students, particularly in light of abrupt school closures.

It would be helpful for the Committees to understand how the Bureau can expand its student outreach efforts. It would be helpful for the Committees to look into a broad effort to provide outreach to students of private postsecondary educational institutions on an ongoing basis and how a single, one-stop government resource for students could be developed. Particularly as students making decisions about important private education and training options can be served by a centralized contact as they navigate through state agency services (much like ombudspersons with missions and statutory direction to help individuals and to streamline processes for relief), it would be helpful for the Committees to understand how Bureau resources can be utilized to assist students before, during and after their time at a Bureau-regulated institution.

***Staff Recommendation:*** *The Bureau should advise the Committees how it balances the need to ensure schools are in compliance with its statutory responsibility to protect students and assist with*

*student needs. The Bureau should provide an update on its plan to provide outreach to students pursuant to Education Code Section 94879 and what role the Advisory Committee can and should play in this plan. The Committees may wish to explore establishing a single point of contact for prospective and current students of private postsecondary education institutions.*

**ISSUE #3: (RELATIONSHIP OF THE BUREAU TO OTHER REGULATORY ENTITIES.)**

**The Bureau has Memorandums of Understanding (MOU) with other licensing agencies, aimed at ensuring communication about schools. Consumers and potential licensees of DCA and other certification entities may benefit from the Bureau’s formal partnership with these programs, particularly when institutions are approved by the Bureau but specific programs offered at those institutions are intended to lead to licensure or certification by another agency. What is the status of Bureau MOUs? Should the Bureau enter into agreements with other agencies that may be able to provide assistance in the Bureau’s efforts to determine program quality?**

**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.

The Bureau approves institutions that may also be subject to program approval by other regulatory entities. 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. Barbering and cosmetology schools and their representatives still believe that BBC (comprised of a majority of public members in statute but with current vacancies, made up of a majority of industry representatives) should have sole oversight of barbering and cosmetology schools and cite the Bureau’s delay in taking swift action against schools that BBC provides inspection information about and believes the Bureau should shut down. The California Massage Therapy Council (Council), which provides for voluntary certification of massage therapists in California, now requires applicants to have completed education at a school that is recognized by another state agency (most rely on BPPE) and is also approved by the Council. The Council and potential applicants for certification have faced challenges in the past when the Bureau takes significantly delayed action on a school that the Council has provided BPPE information about and has provided documentation of laws violated by that school. However, the Bureau is equally frustrated with an inability to obtain access to the Council’s undercover enforcement staff and stated during the prior sunset review that it had to duplicate a Council investigation in order to take any action against an institution. In the past, the Council removed its approval of schools but they remained approved by BPPE. In both of these instances, the Bureau has been provided evidence of falsification of documents showing completion of training programs but has not taken action in such a time as BBC or the Council believe students and the public can be protected. BPPE has a formal MOU with BBC but is not required to do the same with the Council.

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 to sit for licensure, certification or registration. The Bureau approves institutions that

offer degrees or programs intended to lead to licensure or recognition where that regulatory agency has no formal role in providing institutional or programmatic approval. For example, 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 in terms of an ability to approve or disapprove a certain institution. The Board of Behavioral Sciences (BBS) accepts graduates with degrees from Bureau-approved institutions and programs to sit for licensure in some of the BBS' licensing categories. BBS does not require institutional accreditation by a USDE approved accrediting agency, nor does BBS have approval for the institutions and programs training its eventual licensees. The Board of Psychology also accepts graduates with degrees from Bureau-approved institutions to sit for licensure but has no approval over the schools and does not rely on an institutional accrediting agency to measure institutional quality. The Board of Registered Nursing (BRN), on the other hand, has 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. However, some schools may offer a nursing program approved by BRN but that same school may also offer training programs in other professions, for which Bureau approval of that institution would still be required. The Bureau currently has MOUs with BVNPT and BRN and advised during the prior sunset review that it was working on MOUs with the Acupuncture Board and Respiratory Care Board.

The Bureau is also relied on by other state agencies that oversee the expenditure of public resources for workforce and training programs. In order to be listed as an approved provider on the Employment Development Department's (EDD) Eligible Training Provider List, an institution must be approved by BPPE. Pursuant to SB 1247, institutions approved by the state approving agency for veterans' education benefits (CSAAVE) within the California Department of Veterans Affairs (Cal-Vets) must be approved by the Bureau, ensuring that students attending those institutions, regardless of exemptions in the Act, are offered student protections under the Act. BPPE reports that it is in the process of establishing a MOU with CSAAVE and previously reported that it was in discussions for MOUs with EDD and the Department of Public Health.

Given the expertise of staff at boards and other agencies with the educational and training requirements for licensees to safely interact with the public and perform the functions required of their job, it would be helpful for the Committees to understand how the Bureau's Quality of Education (QEU) unit works with other entities to determine program quality. It would also be helpful to understand how the Bureau's Enforcement staff responds to reports, complaints and inspections conducted by other state entities. It would be helpful for the Committees to know if BPPE plans to enter into further MOUs with state agencies to better coordinate services and how the Bureau proactively takes action against institutions offering programs that do not necessarily result in successful training and competency of those who complete these programs.

As the Bureau noted during the prior review, the Act may also be strengthened to ensure students receive training necessary for employment and licensure. Specifically, the definition of "licensure" contained in Education Code section 94848 does not specify certification or registration, but if these are required for a given profession, specific language may be included in this definition. Also, in some professions there are no requirements for official recognition but there may be preferred certification requirements. In those cases, there should be stronger disclosures to students regarding employment impediments they may encounter. For example, ultrasound technicians are not required to graduate

from an institution that is accredited by the American Registry for Diagnostic Medical Sonography (ARDMS) but many employers will not hire students who have not graduated from an ARDMS accredited institution.

**Staff Recommendation:** *The Bureau should advise the Committees on the formal working relationships it has with regulatory entities that rely on education, training and skills based work to be completed prior to recognition in a particular profession or vocation. The Bureau should advise the Committees how the QEU works with other regulatory agencies in its efforts to evaluate program quality and how the Bureau is making licensing boards aware of the QEU's work. The Bureau should advise the Committees on the status of current MOUs, including whether updates are needed, barriers to completing MOUs and MOUs currently underway. The Bureau should update the Committees on how BPPE Enforcement staff prioritize reports of violation of law and documentation that comes from entities the Bureau has a MOU with and whether the relationships outlined in a MOU can lead to the Bureau having the investigative tools it needs to take swift disciplinary action against problem schools. The Committees may wish to amend the Act to clarify the definition of licensure and enhance disclosures to students regarding necessary requirements for training programs.*

**ISSUE #4: (REGULATIONS.)** The Bureau is tasked with implementing important regulations. The Bureau is also required to consult the Advisory Committee on rulemaking efforts. How are regulations prioritized? How does the Bureau work with Advisory Committee members on regulations?

**Background:** Since the prior sunset review, the Board has completed two rulemaking packages and has 4 regulatory proposals in progress. The scopes of these rulemaking packages are broad and include a range of topics from, to name a few, updating the STRF assessment because the fund had exceeded its statutory cap to prioritizing complaints and scheduling compliance inspections to ensuring that degree granting institutions are accredited to defining gainful employment for purposes of important student disclosures. Education Code Section 94880 (d) requires the Bureau to actively seek input from, and consult with, the Advisory Committee regarding the development of regulations...and provide the Advisory Committee with sufficient time to review and comment on those regulations. The Bureau shall take into consideration and respond to all feedback provided by members of the Advisory Committee.”

Some regulatory packages take significantly longer than others and it would be helpful for the Committees to know how rulemaking needs are prioritized. It would be helpful to understand what leads to delays in rulemaking related to implementation of statute and what technical and legal advice the Bureau is provided as it promulgates regulations. It would also be helpful for the Committees to understand how feedback and recommendations from the Advisory Committee and from Advisory Committee members are taken into account.

**Staff Recommendation:** *The Bureau should advise the Committees how it prioritizes regulation packages, when the Advisory Committee is provided draft rules and how Advisory Committee feedback is taken into consideration on regulations the Bureau is in the process of drafting. What is the status of current regulatory packages?*



## **BPPE BUDGET ISSUES**

**ISSUE #5: (FUND AND FEES.)** The Bureau is projected to face a deficit in FY 2017/18 and it is anticipated that the Bureau will request a fee increase. How are resources and needs evaluated on an ongoing basis? Given fluidity in the numbers of schools seeking approval and renewal to operate, how will the Bureau maintain a fair fee structure while meeting the needs of institutions and students?

**Background:** BPPE is funded through regulatory fees and license fees. The Act requires institutions to pay application fees and annual institutional fees to BPPE which are deposited in the Private Postsecondary Education Administration Fund. The Bureau's fees were established by AB 48 and have not been adjusted since BPPE became operative in 2010.

<b>Fee Schedule and Revenue</b> (Dollars in Thousands)							
<b>Fee</b>	<b>Current Fee Amount</b>	<b>Statutory Limit</b>	<b>FY 2011/12 Revenue</b>	<b>FY 2012/13 Revenue</b>	<b>FY 2013/14 Revenue</b>	<b>FY 2014/15 Revenue</b>	<b>% of Total Revenue</b>
New Institution	\$5,000	\$5,000	\$468	\$428.5	\$379.3	\$320.3	3.4%
New Branch – Non Accredited	\$3,000	\$3,000	\$153	\$49	\$56.3	\$56	0.6%
New Branch – Accredited	\$750	\$750	\$75.3	\$61	\$70.6	\$57.8	0.6%
Verification of Exemption	\$250	\$250	\$40.3	\$45	\$52.8	\$41.8	0.4%
Change in Education Objective	\$500	\$500	\$42.5	\$44.8	\$25.3	\$25.3	0.3%
Minor Change	\$500	\$500	\$26.3	\$31	\$22	\$19.8	0.2%
Change in Location	\$500	\$500	\$18.8	\$19.8	\$10.8	\$16	0.2%
Change of Name	\$500	\$500	\$17.8	\$8	\$9.3	\$7.5	0.1%
Change in Approval – Accreditation	\$250	\$250	\$40	\$61	\$61.3	\$59.5	0.7%
Change in Method	\$500	\$500	\$7	\$10.3	\$8	\$9.3	0.1%
Renewal – Main Campus	\$3,500	\$3,500	\$752.8	\$544.5	\$231.6	\$57.2	0.6%
Renewal – Branch	\$3,000	\$3,000	\$24	\$15	\$42	\$0	0%
Renewal – Accredited	\$500	\$500	\$61.5	\$71.8	\$49.5	\$31.7	0.3%
Annual Institution Fee- Main Campus	up to \$25,000	up to \$25,000	\$8,531.1	\$7,972.4	\$8,115.8	\$7,897.5	84.2%
Annual Branch Fee	\$1,000	\$1,000	\$27.2	\$186	\$388	\$398	4.2%

As outlined in the above chart, the majority of BPPE funding is derived from annual fees. Pursuant to AB 48, annual fees for a main campus are set at 0.75% of the institution's annual California revenues (capped at \$25,000) and \$1,000 for each branch location. Institutions are only authorized to have one

"main" campus; all other campuses are designated as branch campuses or satellite locations. For large institutions, annual fees can be manipulated based on the BPPE-approved organizational structure. For example, if a corporation owns 26 colleges, and is approved by the Bureau as one "main" and 25 branch locations, it could pay \$50,000 annually. If that same corporation enters the bureau with 4 main colleges and 22 branch locations, it could pay \$122,000 annually. Additionally, because of the cap, an institution with annual revenues of \$4 million will pay the same \$25,000 annual fee for their main location as an institution with annual revenues of \$40 million.

The appropriateness of fees collected by the Bureau has been the source of discussion since AB 48 was introduced. 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. The California Association of Private Postsecondary Schools (CAPPS) is especially concerned about the high annual institution fee for small-to-medium sized institutions, lack of "fiscal calculations done by the Governor or the Legislature about how many fees were actually required to operate the BPPE. There was no consideration that the overall number of institutions governed by this statute were shrinking... There are a number of schools paying over \$100,000 a year in annual fees alone." CAPPS has specifically referenced the disparity in requiring each "main" campus to pay an annual fee.

BPPE is projected to have a fund reserve of just 2.7 months at the end of FY 2015/16. It appears that the Bureau has had difficulty in aligning its revenues and expenditures. This may be due to the fact that the vast majority of operating revenues are derived from the income of licensees; an industry that, based on a variety of factors, is experiencing changes in size and scope. It may also be due to difficulty in anticipating workload. For example, the Bureau and DCA have reported on multiple occasions about the impacts of significant documents and materials left by CCI after the abrupt 2015 closure. The needs associated with managing 30,000 boxes are legitimate, and it is important that with the shift in its licensing population from smaller, vocational institutions under the former BPPVE to larger higher education entities with a presence in multiple states, the Bureau has the capacity to respond and protect consumers.

The Bureau is in the process of conducting a fee audit and expects that it will be complete in May.

**Staff Recommendation: *The Bureau and DCA should report on the long term resources necessary for the Bureau to effectively regulate institutions and protect students moving forward. Does the Bureau need a fee increase? Can resources be reallocated? Are some fee categories unnecessarily higher than others?***

## LICENSING AND EXEMPTION ISSUES

**ISSUE #6: (COMPLAINTS FOR ACCREDITED NONPROFIT INSTITUTIONS.)** The Bureau has contracts with over 100 nonprofit independent higher education institutions to receive student complaints from students attending those institutions. What is the scope of the Bureau's work related to these complaints?

**Background:** Action taken by the United States Department of Education (USDE) in 2010 aimed at improving the integrity of programs authorized under Title IV of the Higher Education Act requires, among other things, that to remain eligible for Title IV, postsecondary education institutions must be authorized to operate in the state they are located and must ensure access to a complaint process that will permit student consumers to address alleged violations of state consumer protection laws. The regulations took effect on July 1, 2015.

These changes rendered independent institutions of higher education, exempt from Bureau oversight and regulation under the Act by virtue of accredited by a regional accrediting agency, potentially unable to meet the state authorization and complaints process requirements for Title IV. In response, the Department of Finance issued a SFL in May 2015 that proposed statutory changes allowing independent institutions of higher education to be recognized by the state and to enter into a contract with the Bureau to establish a state-level student complaint process. The Bureau subsequently entered into contracts with over 100 institutions in 2015.

It would be helpful for the Committees to understand the role the Bureau plays in receiving student complaints for independent institutions, the workload and staff resources required for the Bureau to monitor contracts with independent institutions, whether the Bureau has received any complaints and how the Bureau treats complaints for these institutions as part of its ongoing complaints workload.

**Staff Recommendation:** *The Bureau should update the Committees on the role it plays with respect to previously exempt independent institutions. What is the Bureau's workload associated with receiving complaints from students of independent institutions? How does the Bureau process these complaints? Does the Bureau enter into one-time contracts or are these contracts renewed annually? What impact on other licensure applications does this new role have?*

**ISSUE #7: (OVERSIGHT BY BPPE OF DISTANCE LEARNING.)** Institutions regulated by BPPE are required to have a physical presence in California. California students enrolled in out-of-state distance learning are not protected by Bureau oversight of the schools they attend. Should BPPE be responsible for regulating online institutions without a physical presence in California that are enrolling California students?

**Background:** The Act defines private postsecondary educational institutions as private entities with a *physical presence* in California offering postsecondary education programs to the public for a charge. California students enrolled in distance/online programs offered by institutions located outside of California do not benefit from the oversight provided by the Act, including access to the STRF. Additionally, some institutional owners maintain physical campuses in California as well as online campuses housed in other states. For example, the recently closed Anthem College Online and CCI's Everest Online Campus enrolled California students in online courses through campuses accredited in

other states. Unlike their counterparts attending physical campuses in California, these online students, despite being California residents, were not provided BPPE protections or tuition reimbursement under STRF when their campuses abruptly closed.

Recognizing the need for oversight of the growing online education field, the initial USDE Title IV regulations in 2010, outlined above, required distance education programs to have authorization in the student's state. The federal regulations specific to distance education were subsequently vacated by federal court ruling. Institutions, however, are required to comply with the laws and regulations of the states in which they operate.

In response to concerns over the complexity and cost of navigating differing requirements in multiple states, a group of institutions, states, and policy organizations developed the State Authorization Reciprocity Agreement (SARA). SARA provides that accredited, degree-granting institutions approved by an oversight body in one participating state will be deemed automatically to have met approval requirements in other participating states. The institution's "home" state is required to respond to student complaints *only after* the student has worked through the institution's standard complaint process. As of January 2016, 36 states agreed to participate in SARA.

In California, SB 634 (Block, 2015) would have authorized state participation in SARA through the BPPE. The bill was supported by public and private higher education institutions, but was ultimately held without hearing in the Senate Education Committee at the request of the author. Several organizations representing students, veterans and consumers raised concerns that California participation in SARA would undermine the state's authority to regulate risky online for-profit colleges, and that SARA's provisions largely focused on decreasing regulation for institutions rather than providing adequate protections for students.

By limiting BPPE's authority to only those institutions with a physical presence in this state, some California students are not protected by the provisions of the Act. There are several possible approaches to rectifying this deficiency.

1. The Legislature could amend the Act to remove the *physical presence* requirement and task the BPPE with full regulatory powers over out-of-state private distance education providers enrolling California students. This would enhance the student protections and recourse for students in the event of a school closure. However, there may be BPPE staffing and workload issues associated with full oversight of out-of-state institutions.
2. The Legislature could amend the Act to provide some oversight of out-of-state distance education providers, such as disclosures to students, participation in STRF, and BPPE student complaint procedures and enforcement powers. The BPPE would not be responsible for conducting compliance inspections, for example.
3. The Legislature could participate in SARA. 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.

**Staff Recommendation:** *The Committees may wish to require out-of-state online institutions to participate in STRF while the issue of reciprocity agreements is further examined. The Committees may also wish to establish base consumer protections and institutional standards for reciprocity agreements prior to authorizing BPPE to enter into such an agreement.*

**ISSUE #8: (UNACCREDITED DEGREE GRANTING PROGRAMS.)** Accreditation provides a basis for determining educational quality. Pursuant to SB 1247, institutions offering degrees must be accredited by 2020 in order to receive Bureau approval. What has been the Bureau's experience with unaccredited institutions offering degrees?

**Background:** During the prior sunset review, the Committees were significantly concerned about the ongoing approval by the Bureau of institutions that offer degrees but are not accredited. In its response to the Committees during the prior sunset review, BPPE agreed, writing that “unaccredited degree-granting postsecondary educational institutions are a global concern. Students often choose unaccredited institutions because they are usually less expensive and frequently provide a degree with less rigorous work on the part of the student. While some students may be aware of the possible issues associated with attending an unaccredited institution and remain complacent throughout the process, other students, often from developing countries, enter unaccredited programs simply because they do not understand the difference between approval and accreditation. Credits and degrees earned at unaccredited institutions are unlikely to be recognized by licensing entities, accredited institutions for purposes of transfer, or many employers. So, while the initial cost of the educational program may be less than that of an accredited institution, the potential that the degree may not provide the consumer the anticipated benefits is high.”

According to the Bureau, accreditation is the accepted standard for educational degrees. Accrediting bodies, as pointed out in a 2013 report issued by the Legislative Analyst's Office's, are good at assessing the quality of educational programs and gathering knowledgeable subject matter experts to assess content, rigor, currency, and delivery of educational programs. They have also been good at keeping up with emerging trends in education and incorporating them into their reviews. The Bureau specifically noted in its response to the prior sunset review that “requiring accreditation would provide a much higher level of consumer protection to students in the state and ensure that California students would have the option of applying for federal financial aid. Additionally, by requiring accreditation for approval to operate in California, the state will save money by not forcing the Bureau to act in the place of an accrediting body for unaccredited institutions.”

At the time, the Bureau highlighted that California is one of few states to continue to allow unaccredited degree granting programs, with approximately 140 approved institutions offering unaccredited degrees. A 2012 *New York Times* article outlined the experience of students attending these institutions, including one seeking a bachelor's degree who had never spoken to a teacher but instead received an email package of reading materials to read with an open choice multiple-choice exam. The practice of offering degrees primarily online and primarily targeted to foreign students has long been at the heart of the state's role as the diploma mill capital of the world.

The Bureau noted during the prior review that it was working to evaluate the approvals granted to unaccredited schools offering degrees and that the end result of the Bureau's analysis often leads to denial upon renewal or approval revocation. The Bureau stated in 2014 that requiring accreditation for

approval to operate would allow the Bureau to focus on its mandate of consumer protection, while relying on academic experts approved by USDE to evaluate academic programs.”

As discussed above in Issue #3, some career fields and licensing agencies 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. Although California licensure requirements in the health care field vary, many practitioners must obtain their required degrees from accredited institutions or institutions approved by their respective licensing boards. While the accrediting process is not perfect, as highlighted by the unlawful activities of institutions accredited by some accrediting agencies, and does not focus on fair business practices that can impact a student’s success, accreditation is designed to provide a baseline measure of the quality of a particularly educational program.

In response to these concerns and as a means of better serving students while aiming to decrease the Bureau’s significant workload associated with reviewing unaccredited degree granting institutions, SB 1247 amended the Act to require that degree granting programs be accredited. Institutions offering a degree that seek BPPE approval are now required to either be accredited by an accrediting agency recognized by the USDE to offer the degree(s) or have an accreditation plan, approved by BPPE, for the institution to become fully accredited within five years of the BPPE issuance of a provisional approval to operate. For these schools, the Act requires compliance with certain student disclosures about accreditation, review by a visiting committee and degree limitation requirements. SB 1247 also outlined a process for institutions that are currently approved by BPPE and offer degrees to submit an accreditation plan to the Bureau by July 1, 2015, to obtain pre-accreditation by July 1, 2017, to obtain accreditation by July 1, 2020, and to comply with various student disclosure and visiting committee review requirements.

BPPE promulgated emergency regulations to implement SB 1247 last year and adopted the final rules in November 2015. The regulations The Bureau has started reviewing plans for accreditation that have been submitted by degree granting institutions and is in the process of forming visiting committees in order to review institutional progress toward accreditation. BPPE states that during July 2015, orders for automatic suspension of approvals to operate were issued to 11 institutions that failed to provide the Bureau their plan for achieving accreditation by July 1, 2015. The Bureau reports that as of August 1, 2015 there are approximately 107 unaccredited institutions offering degrees that are approved by the Bureau or have applied for approval. These 107 institutions submitted plans to the Bureau outlining how they will achieve accreditation by July 1, 2020. BPPE is currently in the process of training staff to organize site visits to verify that progress is being made toward accreditation.

As amended by the Assembly Higher Education Committee, SB 1247 included language to allow for an extension of the timeline for the institution to comply with these requirements, upon the submission of sufficient evidence that an unaccredited institution was making strong progress toward obtaining accreditation. That discretionary authority was subsequently removed, following negotiations between the author and the Bureau and DCA. It appears that some authority to provide extensions for meeting deadlines is still desirable, as the Bureau’s Statement of Reasons provided to the Office of Administrative Law in support of the regulations for implementing the accreditation requirement notes that “a scenario, in which a program was very close, but not quite to the stated goal, was envisioned, where the parties could easily agree that the program would meet the requirement, but it needed a couple more months. In short, substantial performance could be demonstrated. However, extensions

were rejected as the statute states that programs failing to meet the deadlines must be automatically suspended, which allows for no other alternatives.”

Unaccredited degree granting institutions are extremely concerned about the requirement to obtain accreditation and have been working through the legislative process to create exemptions to the new requirements set forth by SB 1247. In letters to the Committees, unaccredited schools approved by the Bureau offering degrees cite a number of factors in justifying why they should be allowed to continue to offer degrees (as opposed to diplomas or certificates of completion) without receiving accreditation from an accrediting agency recognized by USDE. Rationale provided by these schools includes:

- The 2020 timeframe outlined in SB 1247 is too short
- The “unreasonable consumer protection requirements” are causing schools to lose prospective and enrolled students
- The schools have never been deemed out of compliance by the Bureau or had consumer complaints filed
- They do not fit into accreditors “niches”
- They would rather set up their own peer review process
- The Bureau does not verify receipt of documents
- The Bureau piles on “pejorative, burdensome, costly and unneeded reporting and consumer protection requirements” for these institutions

While the accrediting process is not perfect and does not focus on fair business practices that can impact a student’s success, accreditation can provide a minimum measure of quality. It would be helpful for the Committees to better understand the actual barriers to schools becoming accredited, particularly for schools offering degrees. It may be helpful for the Committees to receive documentation, as previously requested, showing that the schools have not been able to become accredited for reasons other than program, faculty and institutional quality. It may be helpful for the Committees to understand the number of California residents who attend these schools in-person compared to the number of foreign students who participate in online programs.

**Staff Recommendation:** *The Bureau should provide an update on its efforts to implement SB 1247 and require institutions offering degrees to be recognized by an accrediting agency approved by the USDE. The Committees may wish to provide the Bureau discretionary authority, as outlined in previous versions of SB 1247, to extend the deadline by which a school must be accredited, according to certain measures showing meaningful progress toward accreditation. The Committees should work with the Bureau and unaccredited schools that are seeking exemptions from SB 1247 and seeking grandfathering provisions (in order to allow them to continue to operate without becoming accredited) to determine the number of California students being served by these schools, whether educational quality oversight is being provided by an entity other than an accrediting agency, and any consumer protection risks associated with allowing these institutions to continue to grant academic degrees without accreditation.*

**ISSUE #9: (EXEMPTIONS.)** The Act contains a number of exemptions for a variety of types of institutions. The Legislature is asked to expand exemptions through legislative proposals that aim to carve out one specific school or one type of educational entity. Are there too many exemptions in the Act? Should current exemptions in the Act be continued?

**Background:** Independent institutions have operated in California for hundreds of years, largely under the rules and requirements governing non-profit entities. For-profit colleges and non-profit certificate programs entered the regulatory structure in the early 1990's in response to a lack of state-level oversight. Despite attempts at meaningful reform and the establishment of laws governing the regulation of institutions, the fragmented regulatory and oversight structure of the former acts were the heart of the rationale behind the eventual elimination of the laws guiding the former BPPVE and the sunset of the bureau.

AB 48, while establishing a foundation for regulation of private postsecondary educational institutions, contained numerous exemptions to state-level oversight which have since been expanded and added to. The following are currently exempt from the Act and oversight 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 bona fide organization, association or council that offers preapprenticeship training programs on behalf of one or more Division of Apprenticeship Standards-approved labor-management or apprenticeship programs that is not on the ETPL currently but has met requirements for placement on the list, that is on the ETPL and that has not been removed from the ETPL for failure to meet performance standards.
- 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 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 USDE; 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 or accept prepayment of instruction-related costs in excess of \$2,500.
- 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) that has been accredited by a USDE recognized accrediting agency for at least 10 years and has not been placed on probation or on

monitoring or sanctioned; is headquartered in California and has operated continuously for at least 25 years; is privately held and was previously granted an approval to operate by the BPPE or the former Bureau and has not changed ownership since its last approval; has not filed for bankruptcy protection; maintains an equity ratio composite score of at least 1.5; derives at least 12.5 percent of its revenues from sources other than state or federal student assistance like Title 38 and CalGrant monies; does not have a cohort default rate over 13 percent for the most recent 3 years; has a graduation rate that exceeds 60 percent; has not been subject to any legal or regulatory actions by a state AG that resulted in monetary settlement, fines or other documented violations; provides a pro rata refund of unearned institutional charges to students who complete 75 percent or less of the period of attendance; complies with other reasonable criteria established by CSAAVE; and verifies its exemption with the Bureau.

The Act was also amended through SB 1247 to prohibit an institution, beginning January 1, 2016, from claiming an exemption from the Act if the institution is approved to participate in Title 38 programs. The Committees were concerned about multiple reports and hearings focused on the experience of veterans at private for-profit institutions, false and predatory advertising to veterans and the potential lack of accountability for the millions of dollars administered by the federal Veterans Administration (VA) and Department of Defense (DOD) spent at private postsecondary education institutions in California if schools are not regulated. 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 federal regulatory requirement governing for-profit schools that no more than 90 percent of revenues come from federal financial aid.

The Bureau has verified exemptions for 617 institutions, denied exemptions for 363 institutions and is in the process of reviewing almost 90 more exemption requests. However, in order to remain eligible to continue receiving Title 4 monies, a number of institutions previously verified as exempt under the Act have now sought voluntary approval by BPPE.

The exemptions in the Act, and attempts to create additional exemptions, have been an ongoing source of consideration for the Legislature. It was not until a hearing in the Senate that AB 48 was amended to include a “good schools” exemption, as institutions pushing for this exemption (based on criteria like length of operation under one owner and nonprofit status) argued that a similar recognition had been included in all legislation related to private postsecondary institution regulation since 1991 and should be continued. During the discussion surrounding SB 1247 in 2014, the Author submitted a letter to the Senate Journal requesting that the Legislature strike the exemption outlined above for WASC accredited institutions to remain exempt and asked that all exemptions provided for in the Act be thoroughly examined by the Legislature to determine the merits of their continuation. Current pending legislation seeks to clarify that law schools approved by the Committee on Bar Examiners, which were exempt from the Act but would now have to receive Bureau approval in order to receive Title 38 monies, can still receive these monies without BPPE approval. Law schools in particular have been the source of scrutiny based on high rates of student debt, misleading employment figures and low state bar passage rates.

The Act, as created by AB 48, attempted to correct many of the prior laws’ structural problems, most especially the former acts’ different standards and requirements for different categories of institutions that created complexities. The Act has one single category of institution and establishes the same standards and requirements for all of the institutions under the Bureau’s oversight. Yet many of the

institutions supportive of exemptions were exempt under the prior BPPVE regulatory framework and seek to continue operating as they always have: subject to oversight by accreditors and state and federal oversight agencies responsible for approving the expenditure of public monies but not the Bureau.

Licensing laws exist to protect the public from potentially harmful services rendered by unqualified businesses and individuals. The intent of licensure is not to punish good actors or impose punitive requirements on businesses and individuals but rather to establish a baseline of licensee quality and competency and corresponding enforcement provisions for consequences of violating the regulatory framework. Professionals and businesses required to be licensed are not able to justify a lack of disciplinary action or sanctions to then skirt their licensure requirement.

Exemptions in the Act may serve as an artificial measure of quality and in some cases, while the intention may have been to ensure that the Bureau's workload is focused on those schools that require attention, may not benefit the public and provide accountability for public monies utilized at these institutions.

***Staff recommendation:*** *The Committees should work with the Bureau to evaluate whether current exemptions in the Act are necessary and what impact these exemptions have on students in the state. The Committees may wish to remove exemptions outlined in the Act.*

**ISSUE #10: (TASK FORCE.)** The BPPE Task Force on Innovative Subject Matters recommends actions to increase disclosures to students, modify student outcome reporting, and streamline and shorten application and approval timelines for high demand technology programs. Should the Legislature make statutory changes to implement one or more of the Task Force recommendations?

**Background:** SB 1247 required BPPE to establish a Task Force to review standards for education and training programs specializing in innovative subject matters for students in high-demand technology fields with a shortage of workers. The Bureau reported during its prior review that there is no readily apparent distinction between the operations of a computer coding school and any other institution offering private postsecondary education and as such, the Bureau would not recommend carving out exemptions for these institutions simply based upon the subject matter that they teach. The Bureau also highlighted the fee structure of these schools as one that may place consumers could be at risk, noting that the schools are expensive, and many of them take a percent of the student's salary once they have obtained a job.

The Task Force was authorized to include postsecondary education experts, owners of institutions, consumer advocates focused on education, high technology employers, students of short-term focused high technology training programs, and providers of high technology training in subjects such as programming, software development, computer science, and coding. At least two of the members were required to be members of the BPPE Advisory Committee.

**Task Force Membership (Appointed by the DCA Director)**

- Shawn Crawford, Senior Vice President, Chief Compliance Officer, ITT Educational Services
- John Carreon, Senior V.P. and Associate General Counsel, Education Corporation of America
- Marie Roberts De La Parra, CEO, Wait a Green Minute and BMB Construction Properties

- Liz Simon, Vice President of Legal & External Affairs, General Assembly
- Kim Thompson-Rust, Consultant, various private postsecondary educational entities

The DCA Director also appointed a consumer advocate to the Task Force. That individual resigned prior to meetings commencing, and was not replaced by another consumer advocate.

SB 1247 directed the Task Force to review all of the following:

- 1) Whether students attending institutions should receive certain disclosures prior to enrolling in an educational program offered by those institutions;
- 2) Whether the means of reporting student outcomes and the content of those reports are appropriate; and,
- 3) The steps the state may take to promote the growth of high-quality training programs in skills for high technology occupations.

The Task Force was required to transmit its report to the Advisory Committee by January 1, 2016. On February 17, 2016, the Advisory Committee reviewed the draft Task Force report. The following recommendations are included in the draft Task Force report:

- 1) Include in the course catalog a detailed section that addresses the rigor involved with the program.
- 2) Include in the course catalog a detailed section that discusses the institution's career guidance services and student expectations.
- 3) Add to the enrollment agreement an area for students to attest that they have received information on program time commitment and rigor, as well as career guidance services offered.
- 4) Develop and conduct a pilot program with the Employment Development Department that aggregates Base Wage File data and reports wage information by institution for High Technology Program graduates.
- 5) Modify the School Performance Fact Sheet to create a disclosure that better fits the characteristics of High Technology Programs.
- 6) Modify the Bureau application process to create an expedited path for approval to operate a school offering a High Technology Program in order to decrease application turn times. This will be accomplished through the use of Evaluator Reports that will supplement the Bureau's current Quality of Education Review. These Evaluator Reports will bring not only employer validation to each program, but will also ensure that industry standards are being met.
- 7) Encourage the state to promote increased access to High Technology Programs for underserved communities through awareness and partnerships with existing state and/or federal workforce programs and nonprofit organizations.

- 8) Provide a mechanism for temporary approval from the Bureau for locations in rural or underserved communities for already approved institutions to provide High Technology Programs, or for institutions to partner with, for example, the California Community Colleges or other adult training programs, to provide High Technology Programs in such areas.

During the February Advisory Committee discussion, members raised questions regarding how the BPPE will distinguish between “good actors” and “bad actors” in regards to high technology training institutions. Questions were also raised regarding the lack of consumer advocate representation and participation in the Task Force. Advisory Committee members voted to modify the Task Force report to address the following: (1) clarification as to which recommendations in the Task Force report related to consumer disclosures supplement existing BPPE requirements, and which recommendations supplant existing requirements; (2) additional language to ensure thorough application review, including specific review of the admission processes and procedures of high-technology institutions; (3) providing consumer groups and the public until March 15, 2016, to review and comment on the Task Force report, and for the Task Force to consider and address those comments; and (4) review report language to ensure sufficient knowledge/experience of the independent evaluators that would be used to review programs during expedited application review. The Advisory Committee is scheduled to review and approve, modify or reject the modified Task Force report at its May 17, 2016 meeting.

***Staff recommendation:*** *The Committees may wish to monitor the Advisory Committee review and action on the Task Force report and direct committee staff to further research and make recommendations regarding any Advisory Committee approved recommendations. The Committees may also wish to request BPPE comment on any administrative changes that will be considered or proposed due to the recommendations contained in the Task Force report.*

**ISSUE #11: (ABILITY TO BENEFIT.)** The Bureau is required to review examinations for ability-to-benefit students by July 1, 2016. What is the status of this effort?

**Background:** Under Federal law, students without a high school diploma or General Educational Development (GED) can qualify for federal Title IV loans, grants, and campus-based aid if they pass an independently administered test of their basic math and English skills, called an ability-to-benefit (ATB) test and are enrolled in an "eligible career pathway program". The intent of the test is to measure whether students have the basic skills needed to benefit from higher education and succeed in the institution. Tests are approved by the USDE and administered by an independent party. Under Title IV, students must pass an ATB before receiving any federal funds.

The Act requires all institutions covered by the Act to administer ATB tests to students who have not obtained secondary education. Students must pass a USDE-approved ATB test before enrolling in the institution. The Bureau is also authorized to publish a list of eligible examinations if the USDE does not have a relevant examination.

Stemming from concerns that existing USDE-approved ATB examinations were not appropriate for English as a second language students and the fact that the Bureau had not published a list of alternative examinations if the USDE does not have a relevant examination, AB 752 (Salas, Chapter 560, Statutes of 2015) required the Bureau to review, by July 1, 2016, the examinations for ATB students prescribed by USDE. Specifically, the Author was concerned that in the absence of the BPPE-published list, many working adults that do not have high school diplomas are seeking to enroll

in job and skills training programs, but are having difficulty passing the USDE-approved ATB examinations, a problem that disproportionality affects those with limited English proficiency and in low income communities.

BPPE has entered into a number of contracts for a number of different services, including the aforementioned technology contracts and the CPS workload and staffing contract discussed previously, as well as a contract to determine the effectiveness of current disclosure requirements. It would be helpful for the Committees to know the status of this report.

**Staff Recommendation:** *The Bureau should provide the Committees with an update on the ATB report and whether the report will be finalized by July 1.*

## **ENFORCEMENT**

**ISSUE #12: (COMPLIANCE INSPECTIONS.) BPPE is mandated by law to perform compliance inspections to determine if institutions are in compliance with the Act. BPPE has been unable to meet the compliance inspection mandate. Compliance inspections primarily result in the identification of minor violations and issuance of a notice to comply (NTC). Material or non-minor violations are referred for investigations, a unit facing a significant backlog. Are changes necessary to ensure compliance inspections result in thorough enforcement of the Act and protection of students?**

**Background:** The Act provides that the BPPE primary mission is to protect students. One of the ways BPPE 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. AB 48 required BPPE to conduct announced and unannounced compliance inspection on each approved institution during each two-year cycle. The 2014 Auditor's report highlighted that the BPPE was not meeting the compliance inspection mandate, and that the random inspection cycles undertaken by BPPE failed to prioritize compliance inspections based on institutional risk. The Auditor found that BPPE failed to identify material violations during the inspections that it did conduct and did not adequately respond to violations that it did detect during inspections.

In response, SB 1247 required BPPE to increase training of staff, and to, by January 1, 2017, adopt regulations prioritizing compliance inspections based on risk and potential harm to students. SB 1247 also, recognizing that high-quality and low-risk institutions may not need compliance inspections as frequently, reduced the minimum compliance inspection mandate from every two years, to every five years. In 2015, the CPS report recommended that BPPE increase compliance staffing in order to complete overdue/backlogged inspections. According to CPS, compliance staff would need to be increased to 34.5 to catch up within two years, and 28.5 to catch up within five years. As the chart below identifies, the BPPE was authorized additional staff in FY 2015/16 to address the compliance backlog.

**BPPE Enforcement: Compliance Inspection Staffing**

Classification	June 2012	June 2013	June 2014	June 2015	Sept. 2015
Manager (SSM II)	0	0	0	0	1
Manager (SSM I)	2	2	2	2	3
Field Inspector (AGPA)	11	10	10	10	12
Desk Inspector (SSA)	5	4	3 (1*)	2 (1*)	7
Assistant (OT)	2	2	2	2	3
<b>Total Staffing</b>	<b>20</b>	<b>18</b>	<b>17</b>	<b>16</b>	<b>26</b>

*\*Number of total that were Permanent Intermittent*

*\*\*Number of total that were Limited Term*

In addition to increased staffing, in 2015-16, the BPPE made changes to the compliance inspection process, consistent with CPS recommendations, to streamline and combine the Annual Report review process and the compliance inspection process.

#### BPPE Compliance Inspection Statistics\*

	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15
<b>Announced Completed</b>	0	189	254	235	156
<b>Unannounced Completed</b>	0	0	1	18	68
<b>NTC Issued</b>	0	38	104	68	127
<b>Referred to Enforcement</b>	0	1	35	66	115
<b>Total Completed</b>	0	189	255	253	224

\*Data provided by BPPE

As previously outlined, upon conclusion of a compliance inspection, institutions are issued an (NTC) for any “minor violations” identified during the inspection. Violations that are not “minor” are referred to the complaint investigations unit for further investigation. Committee staff understands that this internal referral occurs because BPPE believes, unlike most other DCA boards and bureaus, it does not currently have the authority to issue a citation for more serious violations identified during the compliance inspection.

Information regarding pending investigations is not made available to the public until a citation or accusation has been issued by the BPPE. This means that students seeking information regarding an institution may be provided inaccurate information regarding an institution's compliance with the law. For example, 13 unannounced compliance inspections were completed in 2015 of Everest and WyoTech (owned by CCI) campuses. According to the compliance inspection outcome data posted on the BPPE website, no minor violations were detected at any of the inspected campuses. These compliance inspections occurred *after* the AG, and a number of other states and federal agencies, filed charges against CCI for unlawful practices.

The degree to which compliance inspections lead to investigations that result in the issuance of a citation and/or accusation is also unclear; BPPE does not report data on this point. Further, BPPE staff from different units generate complaints and it appears that this internal referral process contributes to the current complaints backlog. According to BPPE data, by 2015 year-end, 32 percent of the 1045 pending complaints were internal referrals.

***Staff Recommendation:*** *To reduce the complaints backlog associated with internal referrals resulting from compliance inspections, the Committees may wish to amend the Act to authorize the Bureau, consistent with all due process requirements, to issue citations for non-minor violations detected during a compliance inspection. To ensure BPPE compliance inspections are properly identifying and responding to institutional violations of law, the Committees may wish to require an independent review and report on the adequacy of BPPE compliance inspections.*



**ISSUE #13: (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. The Bureau historically struggled to comprehensively meet this requirement and the Auditor's report in 2014, as well as prior sunset review of the Bureau, highlighted that there was no program within the BPPE's organizational structure dedicated to unlicensed activity. While the Bureau is required to post denials on its website, it would be helpful for the Committees to understand if additional steps are necessary to assist BPPE in this important work.

**Background:** During the prior review of BPPE, the Committees recommended that the Bureau establish a proactive program to identify unlicensed institutions, mirroring a recommendation by the Auditor. The Auditor's 2015 follow up to its 2014 report on the Bureau notes that this recommendation was fully implemented, however, the only information the Bureau reported to the Committees in its 2015 Sunset Report is that "the Bureau has established a team of staff that is responsible for researching unlicensed institutions in California. In addition, field investigators and compliance inspectors when in the field are cognizant of reporting possible unlicensed institutions observed." The Bureau writes that 23 citations have been issued for unlicensed activity since BPPE was established in 2010.

According to the 2013 sunset report, the Bureau noted that the majority of unlicensed activity is discovered through the complaint process but that much of the unlicensed activity complaints are actually generated by Bureau staff in the course of their work in licensing, inspections, and enforcement. The Bureau highlighted some tools to respond when it finds unlicensed activity, but noted that these often fall short of achieving the goal of closing the institution. For example, the \$50,000 citation fine issued to a school operating without Bureau approval proves to be ineffective for internet based institutions. The Bureau notes that its efforts could be improved with authority to issue an order of abatement requiring that the institution stop enrollment and cease advertising. The Bureau also advised that the definition of "educational program" under Education Code Section 94837 may be amended to remove the current requirement for issuing a certificate or diploma, as institutions the Bureau has come in contact with use this as a means of skirting the approval process, claiming that they are not educational institutions simply because they do not issue any document to a student upon completion of the course of study. SB 1247 incorporated some changes to address these issues; however, the 2015 sunset report does not identify if challenges to BPPE enforcement activities against unlicensed schools still exist.

**Staff Recommendation:** *The Bureau should update the Committees on its unlicensed activity program, what coordination with other state agencies and partnerships might assist the Bureau in identifying unlicensed institutions and whether statutory changes are necessary to improve the Bureau's efforts in this area. If necessary, the Committees may wish to amend the Act to provide the Bureau additional tools to combat unlicensed activity.*



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

**ISSUE #14: (BPPE INVESTIGATIONS BACKLOG AND ENFORCEMENT POWERS.)** The Bureau continues to face a significant backlog of complaints and investigations. While authorized staffing has increased, the number of investigations resolved has not notably improved. Should the Legislature provide additional staffing to improve BPPE's ability to investigate institutions? Does BPPE need additional authority to protect harmed students? Are additional reforms necessary to protect students?

**Background:** The USDE establishes that states are responsible for providing primary protection of consumers and students attending postsecondary educational institutions. BPPE approval not only authorizes institutions to operate and serve students in California, it can also, as outlined above, enable institutions to receive public funds through the federal Title IV financial aid program.

In the last few years, a number of postsecondary educational corporations have been accused by federal and state regulators of engaging in misconduct and fraud. Often, these actions originate from public complaints. The BPPE faces a growing complaint and investigation backlog that may significantly reduce California's ability to protect students and ensure appropriate use of taxpayer funds.

During the prior review of BPPE, the Committees identified more than 700 pending complaints, with some complaints taking one year or longer to resolve. Additionally, in 2013, the Auditor noted that BPPE 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.

In response, SB 1247 directed BPPE to undertake a series of activities to improve complaint resolution: (1) contract with the (AG) to provide training that ensures staff is able to fully investigate complaints; (2) provide the Legislature with an independent review of staffing resources; and (3) consult with the Advisory Committee and establish priorities for complaint processing.

In its 2015 Sunset Review Report, BPPE indicated that enforcement staff is required to attend the DCA Enforcement Academy and the National Certification for Investigators and Inspectors. Additionally, BPPE reports that, in FY 2014/15, BPPE contracted with the AG to conduct training regarding investigation of complaints, report writing and providing witness testimony.

The CPS report recommended a total of 37 staff for BPPE to catch up on backlogged complaints within two years, and 21 ongoing to keep current with complaint related work. In 2014/15 and 2015/16 BPPE was provided additional staffing for complaints and investigations.

The following chart, based on organizational charts provided by DCA, outlines complaints and investigations staffing changes. Of note, this chart indicates authorized positions; however, BPPE has been challenged by turnover, difficulty in filling vacancies (particularly for limited-term positions) and delays due to training of staff.

### BPPE Complaint Investigations Staffing

Classification	June 2012	June 2013	June 2014	June 2015	Sept. 2015
Manager (SSM I)	1	1	2 (1**)	3 (1**)	3
Field Investigator (AGPA)	2	4 (1*)	14 (2* / 9**)	13 (1* / 9**)	14
Desk Investigator (SSA)	4	6 (2*)	6 (2*)	6 (2* / 1**)	6
Assistant (OT)	1	1	1	1	2
<b>Total Staffing</b>	<b>8</b>	<b>12</b>	<b>23</b>	<b>23</b>	<b>25</b>

*\*Number of total that were Permanent Intermittent  
\*\*Number of total that were Limited Term*

As staffing has increased, so has the number of complaints received by BPPE. According to BPPE, this increase is largely attributable to the increase in compliance inspections and resulting internal investigation referrals, as well as the increase in outreach activities that make students and the public aware of the option to file complaints with BPPE.

### BPPE Complaints Statistics\*

	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15
<b>Received</b>	575	819	636	772	766
<b>Closed</b>	430	510	503	540	673
<b>Average days to close</b>	125	112	179	250	363
<b>Pending</b>	270	568	707	949	1050

*\*Data provided by BPPE*

SB 1247 directed BPPE to consult with the Advisory Committee and adopt regulations to establish complaint priorities. BPPE was required specifically to prioritize complaints related to unlawful, unfair or fraudulent business practices and institutions making unfair, deceptive or misleading statements regarding educational programs, placement, loans, tuition and fees, and other outlined areas. BPPE reports the Advisory Committee has discussed new regulations regarding complaint prioritization, and the proposed regulations are currently in the internal review process.

Currently, BPPE reports that it is prioritizing complaints based on a risk assessment score that reviews the following criteria:

- Allegations of complaint
- Population of surrounding community
- Number of open/closed complaints

- Age of complaint
- Institution status

The risk score is used to categorize the complaint as urgent, high or routine.

BPPE appears to have made some progress toward meeting the Legislature's directives contained in SB 1247; however, increased staffing and complaint prioritization changes have not reduced the BPPE complaint backlog. Further, as the details of complaints and resolutions are not made available to the Legislature, it is unclear if complaints are being acted upon properly in order to enforce the Act and protect students.

***Staff Recommendation:*** *The Committees may wish to require an independent review of complaint prioritization and investigation and resolution procedures to ensure BPPE is using all authorized tools to mitigate harm to students. The Committees may wish to ensure that the Bureau promptly adopts regulations and procedures regarding complaint prioritization by directing BPPE action by a date certain. The Committees may wish to ensure BPPE has clear authority to help students harmed by illegal or deceptive school practices; for example, to order institutional refunds/restitution to students who have been defrauded or to require institutions to cancel student loan debt when the institution operates as a private lender. The Bureau should provide the Committees information about barriers to efficient and effective complaint resolution.*

**ISSUE #15: (SCHOOL CLOSURES AND STRF.)** The amount of funds in the STRF exceeds the statutory cap of \$25 million. Legislative efforts to ensure all aspects of student loss are covered by STRF have not been implemented by BPPE. Not all students enrolled in California private colleges are protected by STRF. Few students affected by recent school closures have made claims to the STRF. BPPE outreach to inform students of their tuition recovery and loan forgiveness options appears insufficient. Are reforms necessary?

**Background:** An important tool to assist harmed students is the Student Tuition Recovery Fund (STRF). The STRF, administered by the BPPE, exists to relieve or mitigate economic loss suffered by students enrolled at a non-exempt private postsecondary education institution due to the institutions' closure, the institutions' failure to pay refunds or reimburse loan proceeds, or the institutions' failure to pay students' restitution award for a violation of the Act. STRF is capped in statute at \$25 million. Institutions are required to assess students an amount established in regulation by the BPPE and remit fund to the BPPE for STRF. In 2010, that amount was established at \$2.50 per \$1000 of tuition charged. In 2013, that amount was reduced to \$0.50 per \$1000. In 2015, this amount was reduced to \$0.00, as the STRF had exceeded the statutory cap; STRF now has more than \$28 million.

SB 1247 directed BPPE to enact regulations to expand the uses of STRF to provide relief to harmed students. However, BPPE has not yet enacted new regulations. Due to this, several categories of students that were harmed by illegal institutional practices and closure are not provided full recovery under STRF.

For example, SB 1247 required BPPE to grant STRF claims for students enrolled within 120 days before an institution closes. BPPE's website limits this period to 60 days, and BPPE's regulations limit this period to 30-days, or longer period if BPPE determines an earlier decline in quality. In the case of Corinthian Colleges, Inc. (CCI), USDE took action to expand the closed school loan discharge

eligibility to students enrolled as far back as June 20, 2014. The USDE action made California veteran students eligible for closed school loan discharge. BPPE has not yet taken such an action, and in the absence of new regulations, even the 120-day timeline established in SB 1247 is not applicable.

Additionally, SB 1247 required BPPE to establish regulations that defined “economic loss”, for which a student would be eligible for STRF reimbursement, to include educational opportunity loss. This provision was designed to ensure that students would be eligible to have educational grant funds reimbursed so that they could use those funds at another higher education institution. For example, veteran students using their G.I. Bill monies under Title 38 at CCI are not eligible to have those benefits reinstated under Title 38 regulations. SB 1247 intended to ensure that STRF could be used to pay those lost funds to another educational institution on the student’s behalf. Until BPPE adopts regulations consistent with SB 1247, students are not provided these benefits.

BPPE has provided assistance to students in negotiating the forgiveness, discharge or cancellation of federal and private student loans. This is an important activity that ensures these California students receive the federal benefits to which they are entitled; it also reduces the liability on STRF. BPPE reports that in limited cases, such as with private student loans, the Bureau has reduced the amount of a student’s STRF claim where a loan servicer and/or loan holder was not currently pursuing debt collected and the Bureau was informed that the private loan had been paid in full or withdrawn.

An agreement to stop debt collection is not the same as cancelling debt; this does not protect against loan holders subsequently suing to collect debts. BPPE indicates that, if collection efforts resume, a student could contact the Bureau for reconsideration of the original claim and the Bureau states that it would not consider the claim to be a new claim for purposes of the current two- or four- (depending on circumstances) STRF claim limitation. A student may be able to assert a defense in court, however, this would require the help of an attorney and this may be unaffordable for many students. The Bureau asserts that it would reevaluate that student’s STRF claim if a debt collector subsequently attempted to collect on a loan, but, as outlined in the chart below, a very low percentage of eligible students successfully contact the Bureau to make STRF claims. By requiring a student to subsequently contact the Bureau in the case of debt collection (in some cases, as much as 10 years after the initial claim), the Bureau may be creating an unnecessary barrier for some students.

As previously noted, BPPE regulations establish time limitations for students to file STRF claims. Students are required to file a claim “within two years from the date of the closure notice” for students provided a closure notice, “or a maximum of four years if the student received no closure notice.” Using CCI as an example, over 4,000 former WyoTech and Everest students are estimated to be eligible for STRF. BPPE estimates roughly 80 percent (3,200) met with BPPE staff in the days following CCI’s closure. These students would be subject to the 2-year STRF claim timeline. BPPE reports that about 300 CCI students have filed STRF applications. In light of the relatively low number of STRF applications, as outlined in the chart below, it may be appropriate to review the adequacy of BPPE student outreach activities, as outlined in Issue #2 above, and to extend the STRF claim deadline.

### Student Tuition Recovery Fund Statistics

School Name	# of Students at Closure	Claims Received	Approved	Denied	Pending	% of Enrolled Students w/ STRF Claims Approved
WyoTech (CCI)	1586	100	34	11	55	2.1%
Bryman (+Bio Health)	311	89	39	31	19	12.5%
Career Colleges of America	771	127	44	73	10	5.7%
Everest (CCI)	4336	214	75	40	99	1.7%
Four D College	620	55	17	9	29	2.7%
IME	480	317	180	129	8	37.5%
College of Info Technology	Unknown	226	170	54	2	Unknown

*\*Between January 1, 2010 and February 28, 2016, 1870 STRF claims were received. The institutions above represent 60% of the total STRF claims. The remainder is divided between approximately 107 institutions.*

The USDE recently announced expanded loan forgiveness options for CCI and other students who were affected by a school closure or by the unlawful practices of an institution. According to the California Attorney General, over 85,000 former California CCI students are likely eligible for some form of federal loan cancellation. AB 573 (Medina, 2015), among other provisions, would have provided \$1.3 million in local assistance grants from STRF to provide outreach and assistance to students seeking loan forgiveness. In vetoing AB 573, Governor Brown noted that the federal government has eased student access to federal loan forgiveness. According to the December 3, 2015, report of the federal Special Master for Borrower Defense appointed by the Secretary of USDE, only 1,062 California claimants have qualified for relief so far. Additionally, BPPE staff indicates that CCI students who have contacted BPPE have largely needed assistance to secure loan discharge.

Legal aid organizations currently provide students impacted by school closure with outreach and education, case intake and evaluation, assistance and representation and follow up and appeals regarding their rights and tuition relief opportunities under state and federal law. These organizations indicate that they cannot meet the demand for services without additional resources.

Students enrolled in institutions that are exempt from, or not covered by the Act are not eligible for STRF. Due to the previously discussed broad exemptions in the Act, over 13,000 students enrolled in Heald College (owned by CCI) at the time of the institution's unlawful closure were not eligible for STRF. Due to the physical presence requirement, a number of California students enrolled in Everest Online (owned by CCI but housed outside of California) are not eligible for STRF. Several other large, publicly traded colleges are now under regulatory, financial and legal pressure similar to that facing CCI prior to closure. A requirement for a surety bond or for inclusion in STRF for exempt and online institutions may ensure that all California students are protected.

***Staff recommendation:*** *The Committees may wish to remove the requirements that BPPE establish regulations implementing the STRF reforms contained in SB 1247 in order to ensure these additional rights and protections are provided to students in the absence of new regulations. The Committees may wish to require BPPE to negotiate loan forgiveness, discharge or cancellation prior to reducing STRF eligibility. The Committees may wish to extend the timeframe in which a student may file a STRF claim. The Committees may wish to establish an independent student advocate to*

*work with nonprofit community organizations, to provide outreach and support to students that may be eligible for state or federal relief, and to make recommendations to the DCA Director regarding improving student outreach and protection. The Committees may wish to require institutions (including exempt or online institutions) to participate in STRF and/or obtain a surety bond to protect against unlawful activities or closure.*

**ISSUE #16: (DISCLOSURES, DATA, STUDENT OUTCOMES AND MEASURING STUDENT PERFORMANCE.)** The Act requires institutions to provide prospective students, the public, and BPPE with information regarding performance and student outcomes. Concerns over the accuracy of information, and possible duplication with data required by other oversight entities led to some statutory changes in 2013 and 2014. New lawsuits regarding falsification of student outcome data and the delays in BPPE regulations to implement statutory changes may indicate the need for additional reforms.

**Background:** Institutions regulated by BPPE are subject to reporting and disclosure requirements. The Act requires institutions to provide prospective students with a School Performance Fact Sheet (Fact Sheet). The Fact Sheet includes various data regarding graduation rates, job placement, salary, and licensure examination passage rates.

In response to a series of high-profile claims of false and misleading job placement and salary statistics provided by some for-profit institutions, AB 2296 (Block, Chapter 585, Statutes of 2012) amended the Act to require additional information on the Fact Sheet regarding loan default rates and to increase accuracy of job placement claims. BPPE was directed, by July 1, 2014, to adopt regulations to define “graduates employed in the field” for purposes of ensuring accurate job placement rates are provided on the Fact Sheet. These regulations have not yet been finalized; on February 12, 2016, BPPE issued a Notice of Third Modified Text and then on March 18, 2016, a Notice of Fourth Modified Text.

Under the Act, institutions are required to provide placement rates on the Fact Sheet for any programs that are “designed to lead to, or the institution makes any express or implied claim relating to preparing students for, a recognized career, occupation, vocation, job or job title.”

As proposed on March 18, 2016, the BPPE regulations would define “gainful employment” for purposes of placement rates:

- (1) Institutions must identify, in the school catalog and for each educational program, the list of Detailed Occupation job classifications, under the US Department of Labor’s Standard Occupational Classification (SOC) codes, and may only count graduates employed in those codes as “gainfully employed”; and
- (2) Graduates must be employed in a single or aggregated positions totaling at least 30 hours per week, for 5 weeks (35 calendar days), or at least 20 hours per week for 5 weeks (35 calendar days) with a signed statement from the graduate that he or she chose to seek part-time employment after graduation.
- (3) If the graduate is employed by the same employer that employed the graduate prior to enrollment:



- a. The graduate must be employed in a different Detailed SOC Occupation; or
  - b. The employer or graduate must provide a statement that the employment after graduation was the result of a promotion with increased pay, due at least in part to the graduation from the program; or
  - c. The employer or graduate must provide a statement that the degree or completed program was required as a condition of continued employment.
- (4) Self-employed or freelance graduates may be counted as "gainfully employed" with evidence including, but not limited to, a business license, fictitious business name statement, website, business receipts or other evidence of income from business, or attestation signed by the graduate after graduation.

Consumer organizations point to state and federal actions against large for-profit institutions, including CCI, Education Management Corporation, and DeVry University, for inflating or falsifying placement rates. These organizations suggest a series of changes to the aforementioned proposed regulations. Requested changes include: (1) increasing the minimum employment period to 90-days to discourage institutions from, for example, paying employers to temporarily employ graduates; (2) prohibiting institutions from counting graduates they hire as gainfully employed; and, (3) requiring students to be provided reasonable time to review Fact Sheets and provide at least a 24-hour cooling off period, to respond to concerns regarding high-pressure sales tactics of some for-profit institutions.

As previously noted, the Act requires institutions to include information regarding the salaries of graduates. This data proves hard to collect from graduates, according to the University of Phoenix, as in 2014, only 29 percent of graduates responded to surveys regarding employment and salary. Other options for more reliable salary data are available to California's public institutions. The community colleges, California State University, and University of California are required to provide students and the public data regarding salaries associated with degrees or certificates in specific disciplines. Wage information comes from an agreement between the segment offices 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.

During the prior review of BPPE, concerns were raised by institutions that they are required to provide information by multiple entities, calculated differently for each, and thus, students may be receiving duplicate and conflicting data. 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. In response, SB 1247 required BPPE, by December 31, 2016, to review the various federal, state and accreditation disclosure requirements and make recommendations to the Legislature on whether disclosure can be streamlined, while still ensuring students are provided accurate and thorough data. The Bureau advises that it has contracted with California State University Sacramento and is on target to meet this reporting deadline.

It would be helpful for the Committees to understand whether the proposed BPPE definition of gainful employment is adequate. It would be helpful for the Committees to understand how students might be better served if the Bureau partnered with EDD to gain access to wage data and whether those figures could supplement or substitute the salary data currently provided to students on the Fact Sheet in a way that provides more useful information to prospective students.

**Staff Recommendation:** *The Committees may wish to review the adequacy of the proposed BPPE definition of “gainful employment” and determine if statutory changes are necessary. The Committees may wish to review the Bureau's capacity to partner with EDD to gain access to wage data, to supplement or substitute the salary disclosure currently contained on the Fact Sheet.*

## **TECHNICAL CLEANUP**

**ISSUE #17: (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:** There are instances in the Act where technical clarifications may improve the Bureau's operations and application of the statutes governing the Bureau's work.

**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 #18: (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:** Private postsecondary institutions play an important role in ensuring access to higher educational opportunities for California's students. The landscape of schools that are now regulated under the Bureau, and that have become central in California's discussion of private postsecondary education, has evolved significantly in recent decades. The smaller, independent for-profit institutions that made up the bulk of the former-Bureau's licensee population have shifted. Today, a large number of California students are being served by multi-campus, publicly-traded institutions with a national presence. These institutions also receive significant public funds; under federal law, up to 90% of revenues can come from the Title IV financial aid program. In 2009-10, nationally, for-profit institutions received \$32 billion in Title IV grants and loans. High-profile state and federal investigations have revealed deceptive and illegal practices by some institutions within the sector. Federal regulators responded by increasing student outcome and institutional accountability measures. Specifically, in California, the Bureau's approval can enable these institutions to access the Title IV program; the US Department of Education is relying on the Bureau to provide oversight and student protection.

Students, the public and quality private postsecondary educational institutions are best served by a well-functioning regulatory entity that effectively enforces the Act. The Bureau has faced significant difficulties in implementing the law. It is important that California's approval and oversight of an institution assures minimum quality and student protections.

**Staff Recommendation:** *No recommendation at this time.*