

# BUREAU FOR PRIVATE POSTSECONDARY EDUCATION

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*In exercising its powers, and performing its duties, the protection of the public shall be the Bureau's highest priority. If the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.*

— Education Code § 94875

**T**he Bureau for Private Postsecondary Education (BPPE) is responsible for oversight of private postsecondary educational institutions. All non-exempt private postsecondary educational institutions operating in California, regardless of the school's actual physical location, must be approved by BPPE to operate in California. At this writing, BPPE regulates over 1,000 institutions. BPPE's enabling act, the California Private Postsecondary Education Act of 2009, is codified at Education Code section 94800 *et seq.* The powers and duties specified in the Act are vested in the Director of the Department of Consumer Affairs (DCA), which in turn delegates that responsibility to BPPE as a departmental bureau. BPPE's regulations are in Division 7.5, Title 5 of the California Code of Regulations (CCR).

Operating within, and as a part of, the larger DCA, the law establishes BPPE's purpose as (a) protecting students and consumers against fraud, misrepresentation, or other business practices at postsecondary institutions that may lead to loss of student tuition and related educational funds; (b) establishing and enforcing minimum standards for ethical business practices and the health, safety, and fiscal integrity of postsecondary institutions;

and (c) establishing and enforcing minimum standards for instructional quality and institutional stability for all students.

Private for-profit schools are of particular concern within the industry given the last two decades of alleged abuses. The number of private for-profit schools has grown substantially in number and student attendance since the 1980s. The rationale for regulation of this sector combines two concerns: (1) the irreparable harm to students that may attend years of investment (and student loans) without graduation or employment results; and (2) the possible waste of substantial public financing. Increased scrutiny of the for-profit industry arose in the aftermath of a series of studies beginning with the 2012 [Harkin Report](#) of the U.S. Senate, which documented a host of problems warranting regulation of the for-profit school industry including the schools' misleading claims to students, payment of commissions to salespersons based on number of students recruited, low graduation rates, low job acquisition, and unpaid loan accumulation by students.

## Federal Regulation

The regulatory picture of the private for-profit education industry is complicated by its national implications. As of 2015, Private for-profit schools receive an average of 86% of their revenue from federal grants and loans. In addition to U.S. Department of Education (USDOE) funds, private for-profits received a similar increase in federal GI bill funding from the U.S. Department of Veterans Affairs. Title 38 of the Code of Federal Regulations provides veterans with public funding for tuition payments and some living expense amounts as well.

Recent efforts to regulate at the federal level include a “gainful employment” rule intended to require a record of employment success for federal funds receipt and a system

of loan repayment for students who have been defrauded or left with a closed school and no chance for graduation. Both are currently at risk in the current federal administration under USDOE Secretary Betsy DeVos.

There is also a movement to delegate state regulation to a system called “[State Authorization Reciprocity Agreements](#)” (SARA). This system essentially allows a school to choose its own state regulator and then arrange reciprocal approval by other states. To date, California is the major state declining to join the SARA system. Its entry would substantially impact BPPE’s regulatory powers, particularly given the growth of distance learning where California students may be enrolled in schools with a situs in another state. Effective July 1, 2017, certain out-of-state private schools must register with the Bureau, pay a \$1,500 registration fee, and submit required documentation.

## California Regulation

BPPE is governed by the California Private Postsecondary Education Act of 2009. The Bureau has authority to cite, revoke, suspend, place on probation, or bring an action for equitable relief against any approved institution if it violated applicable laws. To this end, it maintains an Enforcement Section with elements to handle complaints, investigations, and other actions. The Bureau also reviews institution applications for initial approval and renewal approval to operate within California.

As a bureau within DCA, BPPE is not governed by a multimember board. Instead, BPPE operates under the oversight of a Bureau Chief appointed by the Governor and under the direct authority of the DCA Director. BPPE has a statutorily-mandated Advisory Committee tasked with advising BPPE on matters related to private postsecondary

education and the administration of the Bureau's governing statutes, including an annual review of the fee schedule, licensing, and enforcement.

The 12 members of the Advisory Committee must include: three consumer advocates, one each appointed by the DCA Director, the Senate Rules Committee, and the Assembly Speaker; two current or past students of private postsecondary institutions appointed by the DCA Director; three representatives of private postsecondary institutions appointed by the DCA Director; two public members, one each appointed by the Senate Rules Committee and the Assembly Speaker; and two non-voting *ex officio* members (the chairs of the Senate and Assembly policy committees with jurisdiction over legislation relating to BPPE). In August 2017, the director appointed Hanya Carbajal as the past student of a private postsecondary institution committee member and in February 2018, the director appointed Megumi Tsutui as the consumer advocate committee member.

BPPE maintains a [Student Tuition Recovery Fund](#) (STRF) to mitigate student losses when institutions close, fail to pay or reimburse federal loan proceeds, or fail to pay judgments against them. The STRF is funded through student fees. Statutes require institutions to charge fifty cents per \$1,000 of institutional charges to be paid into BPPE's STRF. By statute, the STRF balance must be at least \$20 million but must not exceed \$25 million. It reached \$28 million in 2014; hence, effective January 1, 2015, the assessment ceased, and remains at zero at this writing.

BPPE also maintains an Office of Student Assistance and Relief (OSAR) to advance and promote the rights of students of private colleges, and assist students who suffer economic loss due to the unlawful activities or closure of a private college. The chief

of OSAR is statutorily required to attend, testify, and answer questions at each Advisory Committee meeting.

## MAJOR PROJECTS

### Regulating Out-of-State Institutions

[SB 1192 \(Hill\) \(Chapter 593, Statutes of 2016\)](#) required BPPE to implement regulations related to out-of-state postsecondary institutions. BPPE engaged in the following rulemaking proceedings during this reporting period:

◆ ***Emergency Rulemaking - Out-of-State School Registration Requirement***

On November 21, 2017, BPPE submitted a [notice](#) of emergency rulemaking to the Office of Administrative Law (OAL) to add section 71396, Title 5 of the CCR relating to the registration of out-of-state private postsecondary institutions. SB 1192 (Hill) added section 94801.5 to the Education Code to require out-of-state private postsecondary institutions who enroll students residing in California to register with BPPE and contribute to STRF. It also directs BPPE to adopt a registration form via emergency regulation. The new section incorporates by reference BPPE’s “Application for Registration or Re-Registration of Out-of-State Institutions” [form](#). This is a readoption of emergency action [2017-0519-02E](#). [[23:1 CRLR 224-225](#)] On November 21, 2017, OAL [approved](#) the emergency rulemaking.

◆ ***Out-of-State School Registration Requirement***. On March 9, 2018, BPPE followed up its emergency rulemaking with a [notice](#) of its intent to add Article 3.5 to Division 7.5, commencing with section 71396, Title 5 of the CCR to permanently establish regulations for the registration of out-of-state private postsecondary institutions. According

to the [Initial Statement of Reasons](#), the primary purpose of the proposed regulatory action is to implement SB 1192 (Hill), which requires the Bureau to adopt regulations requiring out-of-state private postsecondary schools to register with the Bureau and participate in the STRF for California students in distance education programs. BPPE contends that students will benefit from the clarity regarding the timing, processes and procedures associated with the registration process, and STRF compliance. The rulemaking also benefits BPPE by creating uniform standards for registration and STRF compliance amongst in-state and out-of-state institutions. A hearing has been set for April 25, 2018.

## Governor Proposes New System of Community College Online Education in 2018-19 Budget

Relevant to the issue of out-of-state institutions is Governor Brown's [Proposed Budget](#), released on January 10 2018, which would allocate \$120 million in funding to create a fully online California community college (\$100 million one-time over seven years and \$20 million ongoing). According to the budget [summary](#), the new online system is intended to provide underserved working students with scheduling flexibility and more accessible learning options, and create and coordinate accessible, flexible, and high-quality online courses and programs. While this program would not directly affect BPPE, it does have the potential to alter somewhat the landscape of online school abuses by providing quality, affordable alternatives to for-profit institutions.

## Adjudication

◆ On November 7, 2017, BPPE filed a [Statement of Issues](#) pertaining to 3G University's application for approval to operate a non-accredited institution. The statement

sets forth a series of obvious attempts to fraudulently acquire BPPE approval. For instance, it alleges that the applicant plagiarized the curriculum and course syllabi from another institution and lied about his ownership stake in the institution. Further, BPPE alleges that the applicant falsely represented that certain faculty would teach at the institution, including presentation of forged documents. Accordingly, BPPE requested that a hearing be held on the matters alleged and that the Director of DCA issue a decision denying the application. At this writing, the DCA has not issued a formal decision.

◆ On December 27, 2017, BPPE filed an [accusation](#) against Silicon Valley University, a known diploma mill, asserting fifteen causes for discipline. Of note, BPPE accused the University of failing to maintain accurate records and failing to offer any sort of organized curriculum. The accusation asserts that the University admitted students that were obviously unqualified or had no reasonable prospect of completing the course of study. The University is also accused of failing to maintain proper student transcripts. At this writing, the DCA has not issued a formal decision.

◆ On January 8, 2018, DCA adopted a [Stipulated Order Surrender of Approval to Operate](#) between BPPE and the San Diego Beauty College. In February of 2017, BPPE filed an [accusation](#) against the school, citing twenty causes for discipline. In the Stipulated Order, the school admitted the truth of each and every charge and allegation in the accusation, and accordingly surrendered its approval to operate. San Diego Beauty College also agreed to cease enrolling students and provide BPPE with the School Closure Plan. The decision became effective on February 16, 2018.

◆ On January 11, 2018, BPPE issued a first amended [accusation](#) against South Baylo University, alleging twenty-two causes for discipline. According to the amended

accusation, in September of 2014, BPPE received two separate anonymous complaints alleging grade tampering and other fraud at South Baylo. In April of 2015, BPPE received further complaints that South Baylo falsified records and sold diplomas. A member from BPPE's Compliance Unit conducted an unannounced inspection of South Baylo on April 19, 2016, finding the school out of compliance in several areas. Accordingly, BPPE is accusing South Baylo of admitting students who do not meet the admissions criteria; accepting nontransferable credits from unaccredited schools; failing to maintain transcripts, enrollment agreements, and tuition records; and destroying records and offering financial aid to ineligible students. At this writing, DCA has not issued a formal decision.

◆ On April 11, 2018, BPPE issued a [citation](#) to Carlos Gonzalez de Villaumbrosia, owner of Product School (PS), for operating without approval. On June 13, 2016, BPPE ordered PS to cease operating without approval. PS filed an application for approval the following November. PS has continued to operate although BPPE has not yet approved the application. BPPE again ordered PS to cease operations and issued a fine of \$100,000.

## LEGISLATION

[AB 1858 \(Calderon\)](#), as introduced January 10, 2018, would add sections 66021.3 and 94912.5 to the Education Code to require, by January 1, 2020, all institutions of higher education in California, including those under BPPE's jurisdiction, to use the United States Department of Education's [Financial Aid Shopping Sheet](#) to inform students or potential students about financial aid award packages. According to the author, "[t]here is no existing law that requires postsecondary education institutions to use a standard form financial aid award letter to communicate financial aid in a user-friendly, easily comparable format." Students end up wasting time comparing the cost to attend multiple institutions without



transparent and accurate cost information. The author further contends that “by requiring uniform disclosures of information, we can ensure students can easily compare institutions and deceptive tactics are not used to hide the true cost of attending a higher education institution.” *[A. Appr]*

[AB 3213 \(Bonta\)](#), as amended April 9, 2018, labelled the “True Cost of Attendance Act,” would add section 66014.25 to the Education Code to require California institutions of higher education to more fully disclose a full-time student’s cost of attendance (“COA”) at that institution. It would also require the institution to accurately disclose to the student how it created that COA calculation. Currently, federal law requires the U.S. Secretary of Education to make available on the College Navigator [website](#) information about such costs. According to the author, there is no standardized system for determining the components of COA related to room, board, and other miscellaneous living costs. Schools failing to accurately predict student’s costs may find that students unable to cover basic education costs, making it more difficult for him/her to complete his/her course of study, or to do so without unexpected debt. *[A. HiEd]*

[AB 2479 \(Voepel\)](#), as amended March 8, 2018, would add section 66027.9 to the Education Code to request the University of California and the California State University system to establish, commencing with the 2020-21 academic year, a pilot program waiving the tuition of students who enter into an income share agreement with the university. The author notes the increasing student debt for graduating students and proposes an alternative for the financing of higher education. While the direct impact of this bill is on the state university and state college systems, it is relevant to BPPE because viable public education

alternatives reduce the opportunity for private for profits to engage in unfair competition and abuse. *[A. HiEd]*

[AB 1803 \(Choi\)](#), as introduced January 10, 2017, would add section 69503.5 to the Education Code to require institutions of higher education that: 1) offer a baccalaureate degree program; 2) provide career placement and job search services to students; and 3) receive state funds for student financial assistance, to provide career placement and job search services to graduates at no cost for five years after the person receives a baccalaureate degree at the institution. The author anticipates that the number of low-income students taking advantage of the services to increase because they would be free. The goal of the bill is to provide parity between current students and recent graduates and to facilitate job acquisition. *[A. Appr]*

[AB 2138 \(Chiu and Low\)](#), as amended April 2, 2018, would amend various sections of the Business and Professions Code relating to professional licensure applicants with criminal records. Of note, the bill would limit the circumstances under which DCA boards may deny professional licensure to individuals who have previously been convicted of crimes; require DCA boards to develop criteria for determining whether a crime is directly and adversely related to the qualifications, functions, or duties of the business or profession a board regulates; develop procedures when requesting or taking disciplinary action based on an applicant's criminal history; and require boards to annually report specified de-identified information relating to Board action pertaining to applicants with criminal convictions, including the number of licensees who were affected, whether they provided evidence of rehabilitation or mitigation; whether they appealed; the final disposition; and the voluntarily provided information on race or gender of any applicant.

The bill is sponsored by a coalition of criminal justice advocacy groups who note that California has among the highest recidivism rates in the nation, and one of the root causes of high recidivism is the inability of prior offenders to secure gainful employment upon reentry. According to the authors, “[a]ll too often, qualified people are denied occupational licenses or have licenses revoked or suspended on the basis of prior arrests or convictions, many of which are old, unrelated to the job, or have been judicially dismissed. Alleviating barriers to occupational licensing is just one way California can reduce recidivism and provide economic opportunity to all its residents.” [A. B&P]

## LITIGATION

On November 29, 2017, in *California v. Ashford University, LLC*, Case No. RG17883963, California Attorney General Xavier Becerra filed a [Complaint](#) in California Superior Court, Alameda County, against Ashford University, and its parent corporation, Bridgepoint Education, Inc. The complaint seeks civil penalties, a permanent injunction, and other equitable relief, alleging the school made myriad misrepresentations to students in an effort to maximize profits by increasing enrollment. In 2005, Bridgepoint Education purchased a non-profit Catholic University in Iowa. Bridgepoint cut ties with the Catholic Church and rebranded itself as Ashford University. The school used its new access to federal student aid to push enrollment over 80,000 students by 2012. Ashford closed its original Iowa campus in 2016.

The complaint describes the “cutthroat sales culture” condoned by Ashford that resulted in an army of salespersons disguised as admissions counselors. The company’s own internal reports identified misrepresentations at rates of thousands per year, based on audits of less than five percent of counselor calls. Many of the victims of the

misrepresentations are of low income. They are often burdened with steep financial debt, degrees that are not recognized by employers, and credits that will not transfer to other institutions. The suit seeks restitution for the victims and significant civil penalties against Ashford. At this writing, the lawsuit is in the discovery stage.

On December 14, 2017, in *California v. U.S. Department of Education*, Case No. 17-7106, California Attorney General Xavier Becerra filed a [Complaint](#) in the U.S. District Court for the Northern District of California against the U.S. Department of Education and Betsy DeVoss in her official capacity as Secretary of Education. The Complaint alleges that the Department of Education failed to process more than 50,000 federal student loan forgiveness claims submitted by former Corinthian College students. In October of 2016, the Department of Education enacted borrower defense to repayment regulations. These rules were meant to streamline the process and ensure that schools were held accountable. In June of 2017, the Department of Education announced that it was postponing the implementation of the rules indefinitely in response to pending litigation. At this writing, the lawsuit is in the pleadings stage.

On October 23, 2017, in *Pacific Coast Horseshoeing School v. Dean Grafilo*, Case No. 17-at-01102, the Pacific Coast Horseshoeing School (PCHS) filed a [Complaint](#) in the U.S. District Court for the Eastern District of California against Dean Grafilo in his official capacity as Director of Department of Consumer Affairs, and Michael Marion as chief of BPPE. Plaintiffs allege a First Amendment freedom of speech violation on behalf of those who want to teach horseshoeing and those who want to learn it. The lawsuit challenges the enforcement of the California Postsecondary Education Act of 2009, which, according to the complaint, makes it illegal for a horseshoeing school to teach a student without a high

school diploma how to become a farrier. Individual Plaintiff Bob Smith, owner of PCHS, claims the Act forced him to deny admission to Esteban Narez, co-plaintiff in the suit, because he lacked a high school diploma. Smith alleges that had he chosen to admit Narez, BPPE would have imposed fines of up to \$5,000. Plaintiffs seek a declaration that section 94904(a) and 5 Cal. Code Regs. section 71770(a)(1) are unconstitutional and an injunction prohibiting defendants from enforcing the provisions as to Plaintiffs. At this writing the matter is at the pleadings stage.

## RECENT MEETINGS

At its February 13, 2018 [meeting](#) in Sacramento, Michael Marion introduced himself as the new chief of BPPE and announced that BPPE drafted two proposals for rulemaking and submitted them to DCA for initial review. One proposed action relates to regulation of English as a Second Language (ESL) program. The proposed action would exempt ESL programs from BPPE oversight. Public comments in reaction to the proposed rulemaking questioned BPPE's current focus *vis-a-vis* its consumer protection mission. The commenters warned that many ESL students are frequently foreign. Without BPPE's oversight, the students lack any other resource for consumer protection.

The second new rulemaking proposal is for the creation of an Application for Verification of Exempt Status, as there is need by some institutions for proof that they are exempt from BPPE oversight. Currently, there is no uniform method of verifying a school's status. After review, DCA will publish the rulemaking actions for comment.

At the meeting, the Advisory Committee also discussed the emergence of income share agreements (ISA's) in private postsecondary education. Advisory Committee Chairperson Katherine Lee-Carey noted that more of these are becoming increasingly

popular alternatives to traditional student funding for unaccredited schools ineligible for federal financial aid, and are comparable to federal income-based repayment programs where students may end up paying significantly less for their education than would be the case had they participated in a traditional student borrower program. Bureau chief Marion agreed that ISA's are an important issue to BPPE, and suggested that a subcommittee be formed to study the issue.