

BUREAU FOR PRIVATE POSTSECONDARY EDUCATION

Bureau Chief: Michael Marion Jr. ♦ General Information (916) 431-6959 ♦ Forms and Publications: http://www.bppe.ca.gov/forms_pubs/index.shtml (Complaint Form) ♦ Internet: <http://www.bppe.ca.gov/>

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

The 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. As of October 15, 2017, BPPE regulated 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 the BPPE's purpose as promoting and protecting the interests of students and consumers. The Bureau is responsible for (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. According to its mission statement, BPPE is to fulfill these public protection goals through effective oversight of California’s private postsecondary educational institutions. It is to promote competition that rewards educational quality and employment outcomes, to proactively combat unlicensed activity, and to resolve student complaints for the benefit of current and future students.

BPPE has jurisdiction over both for-profit and nonprofit schools of higher education. Certain kinds of schools are exempt, including recreational education, trade association programs, apprenticeship training, a federal or state public school (including the University of California and California State University systems), test preparers (such as bar exam preparation), some nonprofit religious schools, a school that does not award degrees and charges less than \$2,500 in total tuition (no part of which is public money), a law school (subject to State Bar and California Supreme Court oversight), and certain nonprofit rehabilitation programs, flight instruction programs, and institutions owned and controlled by a “community based organization” (Education Code section 94874).

In terms of the area of focus for the Bureau within the industry, the private for-profit schools are of particular concern given the last two decades of alleged abuses. A key criterion for BPPE approval of schools in this sector is “accreditation” by an entity recognized by the U.S. Department of Education (USDOE). However, industry critics contend that some of these accrediting entities are overly influenced by the private for-profit applicants, a contention supported by the recent disapproval of the major private for-profit accreditor: the [Accrediting Council for Independent Colleges and Schools](#) (ACICS).

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 without graduation or employment result; of particular concern is the fact that student loans are not dischargeable, even in bankruptcy; and (2) the possible waste of substantial public financing. The students subject to the most incentivized marketing (due to strong public financial support) include two particular groups: veterans and foster children. The problems in the for-profit industry were documented in a series of studies beginning with the 2012 “[Harkin Report](#)” of the U.S. Senate. These studies contend that problems warranting regulation of the for-profit school industry include the schools’ misleading claims to students, the schools’ payment of commissions to salespersons based on number of students recruited, low graduation rates, low job acquisition, and unpaid loan accumulation by students.¹

Private for-profit schools receive an average of 86% of their revenue from federal grants and loans. The [amount](#) has increased to 25% of USDOE spending, or \$32 billion per year. In addition to USDOE funds, private for-profits have received a similar increase in federal GI bill funding from the U.S. Department of Veterans Affairs. This Title 38 veterans’ public funding involves higher tuition payments and some living expense amounts as well.

The regulatory picture of the private for-profit education industry is complicated by its national implications. Recent efforts to regulate at the federal level have included a

¹ See also Robert Shireman, “[The For-Profit College Story: Scandal, Regulate, Forget, Repeat](#)” *The Century Foundation* (Jan. 24, 2017); Alia Wong, “[The Downfall of For-Profit Colleges](#)” *The Atlantic* (Feb. 23, 2017).

“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 by schools with a situs in another state. Effective July 1, 2017, certain of these out-of-state private schools must register with the Bureau, pay a \$1,500 registration fee, and submit required documentation (see MAJOR PROJECTS).

The need for regulation of for-profit schools is also impacted by the U.S. Supreme Court’s decision in *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011). *Concepcion* allows any commercial enterprise, including regulated schools, to place in a “terms and conditions” clause in its consumer contracts a provision that precludes class action remedies and requires individual arbitration of any disputes with students. All private schools routinely include such a provision.² The Obama administration USDOE moved to

² Note that the lack of class action status substantially removes mass grievances from private civil remedy. Some public prosecutors have entered the field, *e.g.*, the attorneys general of 17 different states have litigated against some of the larger schools, including ITT Tech. The California Attorney General brought a successful action against Corinthian Colleges, Inc., one of the largest private for-profit schools. Many of the schools subject to

limit the use of these “class action bar” provisions. However, as with the “gainful employment” rule and student loan regulatory measures, the USDOE under Secretary DeVos has delayed and is apparently seeking revision or elimination of these changes as well.

In California, the effort to regulate this industry started in the early 1980s with limited authority given to a division within the state Department of Education. That division was then “overhauled” by the [Private Postsecondary and Vocational Reform Act of 1989](#), which transferred responsibility for the program to a 20-member Council for Private Postsecondary and Vocational Education, also within the Department of Education. The concurrent Maxine Waters School Reform and Student Protection Act established different requirements for private postsecondary and vocational education institutions. According to a subsequent study, the combination of these two acts created a “fragmented structural framework with numerous duplicative and conflicting statutory provisions.”³ The 1989 Reform Act and the Council itself were heavily criticized for regulatory confusion and the legislature nearly allowed the Reform Act’s sunset date to pass so as to terminate the Council altogether. However, [AB 71 \(Wright\) \(Chapter 78, Statutes of 1997\)](#) created a new structure effective January 1, 1998. AB 71 transferred regulatory responsibility for for-profit schools to a new “Bureau for Private Postsecondary and Vocational Education” (BPPVE) within the DCA. As with its predecessors, BPPVE was subject to much criticism for inadequate student protection and overly burdensome

prosecution have been essentially rendered bankrupt, often with substantial student populations seeking transfers or tuition refunds.

³ Benjamin M. Frank, *Initial Report: Bureau of Private Postsecondary and Vocational Education* (2005).

regulations. For example, in 2002, BPPVE underwent its first “sunset review” before the Joint Legislative Sunset Review Committee. The legislature found BPPVE wholly lacking in enforcement, funding, and authority. The Private Postsecondary and Vocational Education Reform Act, which provided BPPVE with its authority to regulate California institutions, included a sunset date of January 1, 2007, on which the agency would cease to exist unless the legislature passes a bill extending its life. [AB 2810 \(Liu\)](#) would have extended the existence of BPPVE, but Governor Schwarzenegger [vetoed](#) that measure in September 2006. Thus, on January 1, 2007, the statute was allowed to sunset, leaving private postsecondary educational institutions substantially unregulated by the state until December 31, 2009.

On September 6, 2005, the year before the gubernatorial veto, Benjamin Frank, serving as a “monitor” of the BPPVE, released a [178-page report](#) on its failings and needed reforms. As noted above, rather than following the Frank recommendations for reform, the state simply terminated the agency. Critics contend that as a result, the two-year period following the January 1, 2007 BPPVE sunset witnessed marked increases in marketing abuse and public funds waste by this sector, spawning in 2009 the enactment of AB 48 (Portantino) (Chapter 310, Statutes of 2009), the [California Private Postsecondary Education Act of 2009](#). AB 48 creates the current BPPE entity. More recently, [SB 1192 \(Hill\) \(Chapter 593, Statutes of 2016\)](#) extended the sunset dates of both the California Private Postsecondary Education Act of 2009 and BPPE from January 1 2017, to January 1, 2021.

The Bureau has authority to cite, revoke, suspend, place on probation, or bring an action for equitable relief against any approved institution if it has violated applicable law.

To this end, it has an [Enforcement Section](#) with elements to handle complaints, investigations, and other actions. It also uses the offices of the DCA and the Office of Attorney General for its enforcement functions. The agency is funded through regulatory and license fees.

As part of its licensing duties, BPPE reviews institution applications for initial approval and renewal approval to operate within California. Institutions must provide BPPE with information as required by statute and regulation. BPPE reviews this information to determine if the school meets the legal requirements for approval.

As part of its enforcement function, BPPE ensures compliance with the law by requiring institutions to submit annual reports and respond to student complaints; additionally, BPPE perform regular (and sometimes unannounced) inspections. Compliance includes onsite inspections of facilities; reviews of advertisements and websites for misleading material; and examination of catalogs and enrollment agreements for proper disclosures, among other elements. Appropriate disclosures are an important part of this enforcement function, as current law requires institutions to make many disclosures to students. [AB 2296 \(Block\) \(Chapter 585, Statutes of 2012\)](#) requires institutions to make enumerated disclosures on websites, in catalogues and published materials, and in a “Student Performance Fact Sheet.” When institutions commit violations, BPPE may issue a Notice to Comply, or refer the matter to a specific unit for investigation and possible action.

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 as of the end of the last half of 2017.

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. Governor Brown appointed [Michael Marion Jr.](#) as Bureau Chief on September, 27, 2017; Marion is subordinate to DCA Director Dean Grafilo. By law, BPPE has an 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. BPPE must seek input and consult with the Advisory Committee in the development of regulations. Beginning in August 2014, the Advisory Committee has and will continue to meet quarterly (see [SB 1247 \(Lieu\) \(Chapter 840, Statutes of 2014\)](#)); all Advisory Committee meetings must comply with the Bagley-Keene Open Meeting Act.

As discussed above, [SB 1192 \(Hill\) \(Chapter 593, Statutes of 2016\)](#) extended the sunset date of the Act and the existence of BPPE to January 1, 2021. SB 1192 also amended Education Code section 94880, changing the composition of the BPPE Advisory Committee from 14 members to 12 members by eliminating two positions for employers that hire students. 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).

SB 1192 also created the Office of Student Assistance and Relief (OSAR) and requires the chief of OSAR to attend, testify, and answer questions at each Advisory Committee meeting. The purpose of OSAR is to improve BPPE's outreach to students and prospective students at for-profit schools (see MAJOR PROJECTS).

At this writing, the Advisory Committee has two vacancies: one for a past or current student of a private postsecondary institution, and the other for a consumer advocate.

MAJOR PROJECTS

Implementation of SB 1192

The passage of SB 1192 (Hill) (Chapter 593, Statutes of 2016) has required BPPE implementation activities in several areas:

◆ *Office of Student Assistance and Relief.* Established in Education Code section 94949.7, the OSAR opened July 1, 2017, as mandated by SB 1192. OSAR is tasked with (a) conducting outreach and providing information and assistance to students who have been affected by the unlawful activities or closure of an institution regarding their rights under state and federal law, including information about how and where to file a complaint, and to ensure that those students successfully access available state and federal relief programs; and (b) serving as a primary point of contact to address the needs of private postsecondary education students and working in consultation with state and federal

agencies, including, but not limited to, the Student Aid Commission, the Office of the Chancellor of the California Community Colleges, the Department of Veterans Affairs, the federal Consumer Financial Protection Bureau, and USDOE. Specifically, OSAR has been charged with providing individualized assistance to students to relieve or mitigate the economic and educational opportunity loss incurred by those students who attended a Corinthian Colleges, Inc., institution or other eligible institution.

The new law also authorizes OSAR to engage in the following activities: (1) it may provide outreach to students and prospective students to provide them with, among other information, information on making informed decisions in selecting postsecondary educational institutions, student rights regarding school performance disclosures, enrollment agreements, and cancellation and refund policies, how to contact OSAR and the Bureau for assistance, student loan rights and assistance, and free nonprofit community-based resources; and (2) it may conduct data and information research concerning industry trends and enforcement actions from various sources, including, but not limited to, annual reports provided to the Bureau pursuant to section 94934, the USDOE, accrediting agencies, and the California Department of Veterans Affairs to help determine the trends and potential violations of the Act. OSAR is to be directed by a chief appointed by the DCA Director; under Education Code section 94880(g), the OSAR chief must “attend, testify, and answer questions” at each BPPE Advisory Committee meeting.

Under Education Code section 94949.73(d), OSAR must post quarterly reports on BPPE’s website. OSAR recently issued its initial [quarterly report](#), covering the months of July–September 2017. According to the report, OSAR assisted 552 students during its first quarter in existence. Prior to the creation of OSAR, BPPE focused its outreach efforts

primarily on the institutions that it regulates; according to an analysis of SB 1192 by the Senate Committee on Business, Professions and Economic Development, BPPE did not focus similar efforts on student outreach to inform students about BPPE’s relevant duties and student recourse. OSAR is intended to allow BPPE outreach to both institutions and students.

◆ ***Registration of Out-of-State Private Postsecondary Educational Institutions.***

SB 1192 requires out-of-state schools offering distance education within California to register with BPPE and pay a \$1,500 fee. Along with registration, out-of-state institutions operating in California must show evidence of accreditation and must immediately comply with STRF statutes, including contributions.

Due to the requirement of the California Private Postsecondary Act of 2009 that schools under BPPE oversight be “located in California,” recent school closures (including Heald and Everest) have left some students ineligible for STRF. Implementing SB 1192 may ensure that all private postsecondary educational institutions operating in California, regardless of physical location, will be held accountable for violations of the Act through enforcement by BPPE.

◆ ***Emergency Rulemaking to Implement Out-of-State School Registration Requirement.*** On May 19, 2017, BPPE submitted a [notice](#) of emergency rulemaking to the Office of Administrative Law (OAL) to add section 71396, Title 5 of the CCR. As described above, Education Code section 94801.5—added by SB 1192 (Hill)—mandates that non-exempt “out-of-state private postsecondary institutions” that enroll California residents into distance education programs must register with BPPE “effective July 1, 2017,” and authorizes BPPE to adopt emergency regulations to facilitate that registration.

New section 71396 requires an applicant seeking to operate an out-of-state private postsecondary institution that is required to register with BPPE to complete a new “Application for Registration or Re-Registration of Out-of-State Institutions” and submit the completed form to BPPE. The new section also provides that even if the institution’s application for registration is pending with BPPE as of July 1, 2017, the institution must immediately comply with the STRF requirements in Education Code section 94923, including providing student disclosures.

On May 30, 2017, OAL [approved](#) the emergency regulation. The regulatory action took effect immediately and expires on November 28, 2017.

STRF Amendments

On August 10, 2017, OAL [approved](#) BPPE’s amendments to sections 76000, 76020, 76120, 76130, 76200, 76210, 76212, and 76215, Title 5 of the CCR, to expand student eligibility for STRF. BPPE originally published notice of its intent to amend these provisions on March 27, 2016, more than 18 months before final approval.

According to BPPE’s [Initial Statement of Reasons](#), the regulatory changes implement and clarify the statutory amendments to STRF in [SB 1247 \(Lieu\) \(Chapter 840, Statutes of 2014\)](#), including expansion of the STRF eligibility categories. The amendments expand student eligibility to make STRF claims, and clarify regulatory provisions concerning: (a) STRF assessments for re-enrolling students; (b) requirements related to applications for STRF payments; (c) time periods for filing claims; (d) claims by government agencies on behalf of students; and (e) STRF disclosures required of educational institutions placed in their student enrollment agreements and school catalogs.

Of particular importance, the rulemaking package amends section 76000(c) to redefine the term “economic loss” to match SB 1247’s amendment to Education Code section 94923. The amendment allows students who have suffered economic loss, and whose charges are paid by a third party payer, to recover those losses. Amended section 76200(b)(1) requires students to file a STRF claim within four years from the date of the action or event that made the student eligible for recovery from STRF. The time limit is four years from the event where the claim is not based on a school closure. Amended section 76210(f) allows students to use education credits received from STRF at a new institution—if it is eligible to receive the same third party benefit as was the original institution. Amended section 76212 clarifies that STRF funds are paid directly to the student. It is not the intent of the STRF statute for a government agency to be paid STRF funds. For example, the agency cannot recoup attorney’s or other fees. Amended section 76215 requires that the disclosure of the STRF assessment must be included in the student catalogue, as well as in the enrollment agreement; finally, the STRF eligibility requirements must be in the student catalogue.

The amendments became effective immediately upon [OAL approval](#) on August 10, 2017.

Adjudication

Orders Suspending Approval to Operate Degree-Granting Programs

BPPE suspended the following programs from further operations (effective date of suspension in parentheses) for failure to submit evidence of having achieved accreditation candidacy or pre-accreditation by July 1, 2017:

- Rudolph Steiner College (August 2, 2017)
- Richfield University (August 23, 2017)
- Janus University (July 26, 2017)
- Los Angeles International University (July 26, 2017)
- Newport Psychoanalytic Institute (July 29, 2017)
- Pacific International College (August 21, 2017)
- Piedmont University (July 29, 2017)

Revocation of Approval to Operate Degree-Granting Programs

Effective August 5, 2017, BPPE [revoked](#) its approval of ITT Technical Institute (a large private for-profit institution that advertised heavily) to operate in California. ITT had been subject to considerable monitoring and scrutiny by both the USDOE and ACICS, its now-defunct accrediting agency. ITT was subject to discipline by BPPE in 2016 for actions related to its unannounced closure. ITT made no effort to defend against the accusations by BPPE and was [ordered](#) closed June 28, 2017 by DCA.

Denials of Renewal of Approval to Operate Degree-Granting Programs

Institute for Advanced Study of Human Sexuality

On September 24, 2017, BPPE adopted a proposed decision of an ALJ denying renewal of approval to the Institute for Advanced Study of Human Sexuality, which has been approved to award graduate degrees since 1977. BPPE effectively ruled that the Institute lacks the continued ability to offer graduate-level education meeting California's current legal standards in the following areas: (a) lack of accreditation by an accrediting agency recognized by the USDOE; (b) uncertain admissions criteria; (c) failure to provide

clear statements of educational objectives for any academic programs offered; and (d) faculty members do not hold post-baccalaureate degrees from any institution other than the Institute. BPPE specifically rejected the Institute’s argument that its prior approval should allow it to operate so long as it continues to meet the standards that applied to its prior approval, stating: “To renew its approval to operate...the Institute must demonstrate its ability to comply going forward with the statutes and regulations in effect at the time of renewal.” BPPE’s [order](#) becomes effective on October 27, 2017.

Institute of Beauty Culture

On August 18, 2017, BPPE [denied](#) the application for renewal of approval to operate and offer educational programs of the Institute of Beauty Culture, Inc. for the following reasons: (a) failure to provide bylaws; (b) deficient enrollment agreement; (c) inadequate financial statements; (d) catalog deficiencies; and (e) missing annual reports. The order became effective on September 22, 2017.

Accusations of Serious Violations

California University of Management and Sciences

On August 16, 2017, BPPE filed a [formal accusation](#) against California University of Management and Sciences alleging the following causes for discipline: (a) modification or alteration of student records; (b) missing student records; (c) recruiting violations; (d) STRF violations; (e) prohibited business practices, in that the school allegedly dissuaded others not to complain to BPPE; (f) failing to identify a corporate officer; (g) untrue and misleading statements regarding a corporate officer; and (h) offering an unapproved program.

Doaba Trucking School

Doaba Trucking School has been operating in California without BPPE approval since its 2011 renewal application was finally [denied](#) in 2016 after repeated opportunities to correct deficiencies were met with “wholly inadequate financial statements. To the extent the latest statements actually speak to Respondent’s financial situation, the statements show that the Respondent’s financial resources are inadequate. This poses a threat to students who would advance money for courses.” BPPE denied Doaba’s latest renewal application effective September 2, 2017; the Bureau ordered the school to close immediately and reminded it that institutions operating without BPPE approval are subject to fines up to \$50,000.

Significant Assessments of Fines and Orders of Abatement

On October 11 2017, BPPE issued a [citation](#) to San Francisco Cooking School for continuing to conduct business as a private postsecondary institution despite the denial of the school’s application for approval to operate on August 7, 2017. BPPE issued an order of abatement and imposed a fine of \$100,000. Although San Francisco Cooking School has been ordered to cease and desist its recruitment and enrollment of students, at this writing, it continues to operate in defiance of the law.

LEGISLATION

[AB 868 \(Berman\)](#), as amended June 15, 2017, amends section 94874 of the Education Code to exempt certain community-based organizations from regulatory oversight by BPPE. Specifically, the bill adds subdivision (k) to section 94874, to clarify

that an institution owned, controlled, operated, and maintained by a “community-based organization” is exempt from the California Private Postsecondary Education Act and from BPPE oversight if specified criteria are met. Such an entity is defined under federal law as a public or private nonprofit organization of “demonstrated effectiveness that is representative of a community or significant segments of a community” and provides “educational or related services to individuals in the community.” To qualify for AB 868’s regulatory exemption, the organization must satisfy the following criteria: (a) the institution has or is applying to have some or all of its programs on the [Eligible Training Provider List](#) (ETPL); (b) the institution is registered as a nonprofit entity qualified under section 501(c)(3) of the Internal Revenue Code; (c) the institution does not offer degrees; (d) the institution does not offer educational programs designed to lead directly or specifically to positions in a profession, occupation, trade, or career field requiring licensure, if BPPE approval is required for the student to be eligible to sit for licensure; (e) the institution would not otherwise be subject to BPPE oversight if it did not receive federal Workforce Innovation and Opportunity Act (WIOA) funding; and (f) the institution can provide a letter from the local workforce development board that demonstrates the institution has met the initial criteria.

The bill also requires that an institution granted an exemption under AB 868 must comply with all of the following requirements: (a) it must provide the Employment Development Department all required tracking and data necessary to comply with performance reporting requirements under WIOA for programs on the ETPL; (b) it must comply with the ETPL policy developed by the California Workforce Development Board;

and (c) if may not charge a student who is a recipient of WIOA funding any institutional charges for attending and participating in the program.

According to the author, this bill follows [AB 1996 \(Gordon\)](#) in 2016, [vetoed](#) last year, which would have provided a narrow exemption from BPPE regulation for JobTrain, a 50-year-old nonprofit training and career development support center serving low-income individuals. This bill responds to the Governor’s veto message and was carefully crafted to provide an exemption that is broader than “one provider” but still warranted for a specific class of private postsecondary education providers such as JobTrain. The bill now allows JobTrain and other community-based nonprofits that meet the criteria to offer programs on the EPTL in order to provide access to individuals who receive federal WIOA funding. Governor Brown signed AB 868 on September 23, 2017 (Chapter 260, Statutes of 2017).

[AB 1178 \(Calderon\)](#), as amended July 12, 2017, adds section 69509.6 to the Education Code regarding student loans. Commencing with the 2018–19 award year, the new provision requires each higher education institution (except for the California Community Colleges), to the extent that the institution receives student borrower loan information, to send students an individualized paper or electronic letter including the following information: (a) an estimate of the total cumulative principal, payoff amount, and estimated monthly payment amounts; (b) a notification that the estimates are not guarantees; and (c) contact information for the institution’s financial aid office.

According to the author, college students need to have up-to-date information about their cumulative student loan debt while they consider borrowing decisions. The author

contends that this information may lead to decreased impulsive borrowing and student loan regret. The author states:

[a] study by Citizens Bank found 60% of recent college graduates surveyed underestimated their own monthly loan repayment amount. In a Consumer Reports study of student loan behavior, 47 percent of recent college graduates reported they would have accepted less financial aid during college if they had to make the decision again.⁴

As the bill analysis notes, the author contends that under federal law:

students are required to undergo entrance counseling before receiving loans and exit counseling at fruition. The interim time spans the entire length of a student's enrollment at a post-secondary institution. In the years between these two counseling sessions, qualifying students receive financial aid packages and accept debt burden for each academic year.

The author argues that, "at no time during these interim academic years are universities required to disclose how much debt a student has cumulatively accrued or provide information on approximate monthly loan payments." As discussed elsewhere, the status of student loans as nondischargeable—even in bankruptcy—means there is no time limit on the continuation of debtor status with implications on everything from financing a home to renting an apartment.

This measure will require each higher education institution, except for the California Community Colleges, to provide students a detailed letter itemizing their total cumulative loan amount, the percentage of the federal loans borrowing limit they have reached, and an estimated monthly payment based on a formula created by each institution. Governor Brown signed AB 1178 on October 3, 2017 (Chapter 448, Statutes of 2017).

[AB 1611 \(McCarty\)](#), as amended April 17, 2017, would add section 94801.6 to the Education Code. The new provision would require institutions subject to BPPE

⁴ See "[Student Debt Lives on Hold](#)," *Consumer Reports* (June 28, 2016).

approval to submit to BPPE, for each of its debt-dependent programs, specified information regarding each person in a graduating cohort. A “cohort default rate” is a standard measure of the success of a higher education experience. In theory, one should be able to obtain enough earnings from employment to repay the loans undertaken. Commonly, graduates over a three-year period will be longitudinally tracked to see what percentage are unable to do so. That “cohort default rate” should be low to warrant student and public money investment.

This bill would require BPPE to obtain federal student loan debt and median and average earnings for each person in a graduating cohort. It must then determine the total amount of student loan debt incurred by these persons, and make available to the public certain data, including student loan debt and earnings data, for each debt-dependent program offered by the institution. The bill would authorize BPPE to, among other things, require the institution to provide warnings to current and prospective students regarding its programs with high debt burdens relative to earnings, and deny approval to operate for a new program that is substantially similar to a program that has exhibited high debt burdens, as determined by BPPE. The bill makes its provisions operative only if analogous federal regulations are suspended or repealed.

On July 1, 2015, the federal gainful employment regulation took effect to protect students and increase accountability of low-performing career training programs at higher education institutions. The Trump administration has delayed implementation of federal gainful employment regulations (see INTRODUCTION). The bill did not come across the Governor’s desk by September 15, 2017 and died in suspense file. *[A. Appr]*

[AB 1619 \(Berman\)](#), as amended May 30, 2017, would add section 94885.6 to the Education Code. The bill would require BPPE to prohibit institutions that are subject to its jurisdiction from enrolling new students in an educational program that receives a fail rating for two out of three consecutive years, or receives a combination of zone or fail ratings for four consecutive years, based on the federal debt-to-earnings rates. The bill would prohibit these institutions from reestablishing enrollment of new students in a fail or zone educational program that it has discontinued voluntarily; reestablishing enrollment of new students in an educational program that is out of compliance under the federal debt-to-earnings rates; or establishing enrollment of new students in an educational program that is substantially similar to the discontinued or out of compliance program, until three years have passed. The bill would authorize institutions with an educational program that receives a fail or zone rating under the federal debt-to-earnings rates to file an alternate earnings appeal.

The goal of this bill is to align California law with the federal gainful employment regulation. Under federal law, a program becomes ineligible for Title IV federal financial aid funding if the program receives a fail rating for two out of three consecutive years or has a combination of zone or fail ratings for four consecutive years. Although AB 1619 was referred to the suspense file on May 17, 2017, it was then held under submission on May 26, 2017, for further discussion. [S. Ed]

LITIGATION

On July 6 in *Commonwealth of Massachusetts v. U.S. Department of Education*, 19 state attorneys general [filed suit](#) in federal district court against USDOE Secretary Betsy DeVos, charging that she is illegally delaying the implementation of Obama administration

regulations addressing the federal student debt of borrowers defrauded by for-profit colleges. One specific change affects the rules of the previous administration that would have ended or limited the ability of schools to require student “terms and conditions” agreements to waive any class or group remedy (class action waivers). Permission to impose this condition effectively prevents large numbers of aggrieved consumers or students from realistic access to arbitration or judicial recourse for violation of contracts, deceptions, or unfair competition. These grievances may be part of a generalized market pattern, but individualized cases do not allow for realistic remedy. The changes to limit school ability to foreclose effective civil remedy were supposed to take effect July 1, 2017. However, Secretary DeVos suspended the changes in June, stating that the federal borrower defense regulation would be rewritten.

According to DeVos, the delay is necessary to enable USDOE to litigate a federal lawsuit brought by a group of for-profit colleges in California that is seeking to block these pro-student updates. The state attorneys general opposing her reversal argue that the delay is simply a pretext for illegally repealing the rule in order to diminish student rights and protections. Of some interest, on July 3, 2017, a federal appeals court [struck down](#) an attempt by the Environmental Protection Agency to delay a regulation using reasoning similar to that advanced by USDOE. The court held that the agency could reconsider the rule but could not delay its effective date. The issue will turn largely on the interpretation of the federal Administrative Procedure Act.

RECENT MEETINGS

At its May 17, 2017 meeting, the Advisory Committee selected Katherine Lee-Carey as Chair of the Committee.

At the Advisory Committee’s May 2017 meeting, BPPE Enforcement Chief Beth Scott discussed the Bureau’s goal of implementing a structured “academy” type of training program for BPPE compliance inspectors. For new inspectors, the program would focus on specific topics: (a) rules and regulations; b) minimum operating standards; and (c) appropriate items to investigate during an inspection. BPPE intends to automate some inspection processes to increase efficiency. A main goal is for inspectors to work with institutions prior to inspections to resolve concerns and ensure efficiency. Although there is currently no timeline for the training program to be implemented, BPPE reported that it expects a functioning training program will be in place with new inspectors by mid-July. Of note, BPPE is working with DCA’s Office of Information Services (OIS) to generate a compliance prioritization report that will highlight institutions with the most pressing risk factors.

Also at the May meeting, the Advisory Committee noted that on December 12, 2016, the USDOE ceased to recognize ACICS as an approved accrediting agency. This is an important issue due to the reliance many states confer on private accrediting entities, notwithstanding questions of competence and conflicts of interest. ACICS has been a major accreditor allowing school approval by California, among other states. DCA is currently monitoring the situation at the federal level. DCA Chief Deputy Director Jeffrey Mason stressed the importance for BPPE to continually reach out to impacted students and institutions in order to relay pertinent information and options. BPPE Chief Joanne Wenzel stated that emergency actions could be taken if students are in immediate harm. Wenzel added that institutions previously accredited by ACICS have been advised by BPPE to apply for full approval and most have done so.

Also in May, BPPE Enforcement Chief Beth Scott provided an update on the compliance unit and its enforcement efforts. Scott confirmed that the compliance unit currently places additional focus on ACICS institutions. However, BPPE Enforcement Manager Phuong Thach explained that the type of institution is not a factor when considering complaints; the type of allegation is the priority. BPPE Chief Joanne Wenzel noted that BPPE is focused primarily on the potential harm to the student.

Also in May 2017, the Advisory Committee discussed draft regulatory language to amend section 70000(k), Title 5 of the CCR, to exempt English as a Second Language (ESL) programs from the California Private Postsecondary Act of 2009. ESL programs are not considered vocational because they do not lead directly to employment and are not considered “academic” because they focus only on English as a language. The Advisory Committee believes it is impractical for ESL institutions to complete a performance fact sheet because there are no placement results to be reported. Students of ESL programs are generally not eligible for STRF because they are typically not California residents. However, the current regulatory language does not exempt ESL institutions as was originally intended. At this writing, BPPE has not published the draft amendments for a 45-day public comment period.

Finally, Ms. Wenzel next addressed BPPE’s strategic plan at the May meeting, explaining that BPPE actively revisits the plan to track its progress. The [Strategic Plan](#) currently focuses on the following goal areas: licensing, complaints, discipline, compliance, quality of education, regulations and legislation, outreach and consumer education, and organizational effectiveness. Deputy Bureau Chief Leeza Rifredi reported that as of the date of the meeting, 294 applications were currently under review with an

average approval time of 114 days. Rifredi reported that BPPE currently has 751 active STRF claims with an average processing time of 60 to 90 days. In response to public comment asserting that the fee increases set forth by SB 1192 exceed BPPE needs, Wenzel noted that BPPE continually monitors and tracks fees. Finally, Ms. Lee-Carey reiterated the need to draft regulatory language regarding application processing goals and timelines pursuant to [California Education Code section 94888\(b\)\(2\)](#).

BPPE cancelled the Advisory Committee's meeting scheduled for August 15, 2017.