BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR
DEPARTMENT OF CONSUMER AFFAIRS • BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
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Bureau for Private Postsecondary Education
Notice of Advisory Committee WebEx Meeting Agenda

Wednesday, November 3, 2021, 9:30 a.m.

NOTE: Pursuant to Government Code section 11133, neither a public location nor teleconference locations are provided.

INSTRUCTIONS FOR OBSERVATION:

WEBCAST: Webcast of the meeting will be available at 9:30 a.m. on November 3, 2021 and viewable here.

FOR PUBLIC COMMENT, PLEASE LOG ON TO THIS WEBSITE

https://dca-meetings.webex.com/dca-meetings/j.php?MTID=m9172164e25380486b93c583ff2dbb827

Event Number: 2494 276 5652 Event Password: BPPE11032021

The preferred audio connection is via phone bridge. The phone number and access code will be provided as part of your connection to the meeting. General instructions for using WebEx can be found at the end of the agenda.

Important Notices to the Public: The Bureau for Private Postsecondary Education will hold a meeting via WebEx. Access information is provided above. General instructions for using WebEx are attached at the bottom of the agenda.

The Advisory Committee Meeting is open to the public. Members of the public may, but are not obligated to, provide their names or personal information as a condition of observing or participating in the meeting. When signing into the WebEx platform, participants may be asked for their name and email address. Participants who choose not to provide their names will need to provide a unique identifier such as their initials or another alternative, so that the meeting moderator can identify individuals who wish to make public comment; participants who choose not to provide their email address may utilize a fictitious email address like in the following sample format: XXXXX@mailinator.com.

The Advisory Committee Meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Richie Barnard at (916) 574-8903, by emailing richie.barnard@dca.ca.gov or sending a written request to the Bureau for Private Postsecondary Education, P.O. Box 980818, West Sacramento, CA 95798-0818. Providing your request at least five business days before the meeting will help ensure availability of the requested accommodation.

Discussion and action may be taken on any item on the agenda. The time and order of agenda items are subject to change at the discretion of the Chair. In the event a quorum of the committee is unable to attend the meeting, or the committee is unable to maintain a quorum once the meeting is called to order, the members present may, at the chair's discretion, continue to discuss items from the agenda and make recommendations to the full committee at a future meeting.

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the committee or prior to the committee taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issues before the Advisory Committee, but the chair may, at her discretion, apportion available time among those who wish to speak. If public comment is not specifically requested, members of the public should feel free to request an opportunity to comment. Individuals may present to the Advisory Committee on items not on the agenda, however, the committee can neither discuss nor take official action on these items at the time of the same meeting (Government Code sections 11125, 11125.7(a)). The Advisory Committee plans to webcast this meeting at https://thedcapage.blog/webcasts. Webcast availability cannot, however, be guaranteed due to limited resources or technical difficulties. The meeting will not be cancelled if webcast is not available. Using the WebEx link will allow for participation and observation with closed captioning.

Agenda

The public may provide appropriate comment on any issue before the Advisory Committee at the time the item is discussed. If public comment is not specifically requested, members of the public should feel free to request an opportunity to comment.

1. Welcome, Introductions, and Establishment of a Quorum

2. Public Comment on Items not on the Agenda (Note: The Advisory Committee may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125 and 11125.7(a))

3. Review and Approval of August 26, 2021, Advisory Committee Meeting Minutes

4. Remarks by a Representative of the Department of Consumer Affairs, which may include updates pertaining to the Bureau's Operations, Human Resources, Department's Administrative Services, Enforcement, Information Technology, Communications and Outreach, as well as Regulatory and Policy Matters

5. Bureau Operations Update and Discussion related to the following:
    a. IT System Project
    b. Annual Report Update
    c. Quality of Education Report
    d. Compliance and Discipline Report
        i. School Inspections by the Bureau
        ii. Disciplinary Highlights and Resulting Actions Statistics
        iii. Citation and Fines
    e. Complaint and Investigation Report
        i. Complaint and Investigation Statistics
    f. Licensing Report
        i. Licensing Applications Status Statistics
        ii. Report on the Number of Institutions

g. Office of Student Assistance and Relief (OSAR) Report
    i. Overview of OSAR Activities Summary Report
    ii. School Closure Outreach Update
h. Student Tuition Recovery Fund (STRF) Report
    i. STRF Claims and Large Impact Closure Statistics
    ii. Silicon Valley University Summary

6. Status Update and Discussion related to the following Regulations:
    a. Discussion of STRF Fee Increase Proposal (CCR Section 76120)
    b. Status Update on Application for Verification of Exempt Status (California Education Code (CEC) Sections 94874, 94874.2, 94874.7, 94874.5, and 94927.5; Title 5, California Code of Regulations (CCR) Section 71395)
    c. Status Update on Draft Language for Labor Market Outcome Data Reporting (CCR Sections 74110(d)(e), and 74112(o), CEC Section 94892.6, Assembly Bill (AB) 1340 (Chiu, Chapter 519, Statutes of 2019))
    d. Status Update on Draft Out-of-State Institution Registration Form (CCR Section 71396, CEC Section 94801.5, AB 1344 (Bauer-Kahan, Chapter 520, Statutes of 2019))

7. Update and Discussion on Recently Chaptered Legislation Impacting the Bureau (Senate Bill 802 and Senate Bill 607)

8. Discussion on Recent State and Federal Actions on Income Share Agreements and their Relevance to the Bureau

9. Continued Discussion on Senate Bill 118 (Committee on Budget and Fiscal Review, Chapter 29, Statutes of 2020) Prohibition on Use of Applicants' Criminal History in Admission Decisions (CEC Section 66024.5)

10. Future Meeting Dates

11. Future Agenda Items

12. Adjournment

Agenda Item 1

WELCOME, INTRODUCTIONS AND ESTABLISHMENT OF A QUORUM

Committee Member Roster

Katherine Lee-Carey, Chair

- Institutional Representative (Appointed by DCA Director)

Margaret Reiter, Vice-Chair
- Consumer Advocate (Appointed by Senate Committee on Rules)

Diana Amaya
- Public Member (Appointed by Senate Committee on Rules)

Kansen Chu
- Public Member (Appointed by Speaker of the Assembly)

Zima Creason
- Past Student of an Institution (Appointed by DCA Director)

Melanie Delgado
- Consumer Advocate (Appointed by DCA Director)

Leigh Ferrin
- Consumer Advocate (Appointed by Speaker of the Assembly)

Joseph Holt
- Institutional Representative (Appointed by DCA Director)

David Vice
- Institutional Representative (Appointed by DCA Director)

Senator Richard Roth
- Non-Voting, Ex Officio Member (Appointed by the Senate Committee on Rules)

Assemblymember Jose Medina (Kevin Powers)
- Non-Voting, Ex Officio Member (Appointed by Speaker of the Assembly)

Agenda Item 2

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

(Note: The Committee may not discuss or take action on any matter raised during this public comment section, except to decide whether to place the matter on the agenda of a future meeting (Government Code Sections 11125 and 11125.7(a).)

Agenda Item 3

REVIEW AND APPROVAL OF AUGUST 26, 2021, ADVISORY COMMITTEE MEETING MINUTES

ATTACHMENT:
Advisory Committee Draft Meeting Minutes from August 26, 2021

Advisory Committee Meeting Minutes
Thursday, August 26, 2021

WebEx Meeting

Advisory Committee Members in Attendance

1. Kansen Chu
2. Zima Creason
3. Melanie Delgado
4. Leigh Ferrin
5. Joseph Holt
6. Katherine Lee-Carey
7. Kevin Powers (on behalf of Assemblymember Jose Medina)
8. Margaret Reiter
9. David Vice

Committee Members Absent

Diana Amaya
Senator Steven Glazer (Sarah Mason)

Bureau for Private Postsecondary Education (Bureau) and Department of Consumer Affairs (DCA) Staff in Attendance

Deborah Cochrane, Bureau Chief
Leeza Rifredi, Deputy Bureau Chief
Linh Nguyen, DCA Legal Counsel
Carrie Holmes, DCA Board and Bureau Relations Deputy Director
Taylor Schick, DCA Fiscal Officer
Gregory Pruden, DCA Legislative Manger
Robert Bayles, Bureau Education Administrator Chief
Michele Alleger, Bureau Compliance Manager
Christina Villanueva, Bureau Discipline Manager
Clarisa Serrato-Chavez, Bureau Compliant Investigations Manager
Karen Borja, Bureau Compliant Investigations Manager
Ebony Santee, Bureau Licensing Chief
Scott Valverde, Office of Student Assistance and Relief (OSAR) Chief
Yvette Johnson, Bureau Administration Chief
David Dumble, Bureau Legislative/Regulation Specialist

Agenda #1 - Welcome, Introductions, and Establishment of a Quorum

Committee Chair, Katherine Lee-Carey called the meeting to order.

Agenda #2 - Public Comment on Items not on the Agenda

Mike Roberts provided public comment.

Agenda #3 - Review and Approval of May 27, 2021, Advisory Committee Meeting Minutes

Public Comment

No Public Comment.

David Vice moved to approve the minutes; Kansen Chu seconded the motion.
(Ms. Lee-Carey: Aye; Mr. Vice: Aye; Ms. Reiter: Aye; Ms. Creason: Aye; Mr. Holt: Aye; Ms. Ferrin: Aye; Ms. Delgado: Aye; Mr. Chu: Aye) The motion passed.

Agenda #4 - Remarks by Representative of the Department of Consumer Affairs

Carrie Holmes, Deputy Director for Board and Bureau Relations, provided an update on the Department of Consumer Affairs (Department).

Ms. Holmes reported that current waivers allowing Boards and Bureaus to meet remotely expire September 30, 2021. She noted that, due to ongoing changes with the COVID-19 pandemic, the ability to meet remotely may be extended to some capacity.

Ms. Holmes outlined one of California's plans to reduce the spread of COVID-19. She explained that state employees will be required to show proof of vaccination or be subject to regular COVID-19 testing and wear appropriate PPE.

Public Comment

No Public Comment.

Agenda #5 – Bureau Operations Update and Discussion

Sunset Review and Alternative Fee Proposal

Gregory Pruden, DCA Legislative Manager, provided a high-level update on the Bureau's Sunset Review. He stated that Senate Bill 802 (Private postsecondary education: California Private Postsecondary Education Act of 2009) is expected to move from the Assembly Appropriations Committee to the Assembly floor today for further action. He noted that, following discussions with various stakeholders, it does not appear the bill will include any general fund money allotted to the Bureau. He added that the bill only contains a one-year extension of the Bureau, and further discussions on fees and funding are expected to continue next year.

Taylor Schick, DCA Fiscal Officer, provided a brief overview of the Bureau's fiscal status. He referenced the alternative fee proposal included in the meeting materials. He explained the Bureau has a structural fund deficit, with expenditures are outpacing revenues. He noted that for 2021 there is a projected deficit of $6.6 million.

Mr. Schick stated that currently roughly 90% of the Bureau's revenues are derived from annual institution fees. He outlined the alternate fee proposal attachment in the meeting packet. He pointed out proposed options that would address the revenue deficit and keep the Bureau solvent for the foreseeable future.

Ms. Reiter questioned how the Bureau determines if revenue being reported by an institution is accurate. She noted that institutional revenue could include more than just tuition and questioned how the Bureau defines revenue in relation to annual fees. Ms. Cochrane responded that revenue is limited to what an institution collects from California students. Ms. Lee-Carey pointed out that institutions are required to provide audited financial reports with the annual reports.

Public Comment

Angela Perry provided public comment.

Mike Roberts provided public comment.

Mousumi provided public comment.

Update on the Bureau's IT System Project

Sean O'Connor, Chief of Project Delivery and Administrative Services, provided an update on the Bureau's IT system project. He explained that the project implementation stage began in January 2020. He noted that due to COVID-19 the project shifted from on-site staff interactions to entirely offsite. He added that successful implementation of the project has continued remotely utilizing Microsoft Teams to facilitate staff interactions and training.

Mr. O'Connor explained that functionality is being implemented incrementally. He noted three project implementations that are already in place including an online approval application for an institution non-accredited, an online consumer complaint form with back-office processing functionality, and the conversion of enforcement data from the legacy system to the new system.

Mr. O'Connor noted that the project is trending towards being completed under the allotted budget.

Mr. O'Connor stated that the project is currently in its last major software release stage. He added that the focus is on releasing an online process for the remaining licensing applications, converting the remaining licensing data from the legacy system to the new system, and implementing an online process for the submission of Student Tuition Recovery Fund (STRF) claims.

Mr. O'Connor reported that following the completion of the implementation phase the project will shift to the maintenance and operations phase. He noted that changes to system functionality, based on internal and external user feedback, can still occur beyond the completion of the project implementation phase.

Ms. Reiter asked how much historical data in the legacy system will be converted into the new system. Mr. O'Connor responded that data at a minimum of 7 years back has or will be converted from the legacy system into the new system. He added that he could provide additional information regarding data conversion at a later time.

Ms. Reiter questioned what information may become available online to prospective students following the completion of the new IT system. She asked if there will be some sort of a rating of institutions. Mr. O'Connor replied that the scope of the project does not include ratings of institutions. He continued that the public will be able to see an institution's approval status and what programs are offered. Ms. Reiter pointed out that it would be beneficial if a student could search for a program and then compare institutions based on a rating, such as placement rates.

Ms. Reiter asked if the new system would expand on the categorical classifications of complaints, such as more specific categories for non-jurisdictional complaints. She noted it would be helpful if the Bureau could report on what new addition of categories will be available in the new system.

Public Comment

Angela Perry provided public comment.

Accrediting Council for Independent Colleges and Schools (ACICS) Implications for Bureau

Robert Bayles provided an update on ACICS and school implications for the Bureau. He referenced Attachment 5c of the meeting packet.

Ms. Reiter questioned if the Bureau is taking a closer look at the schools that are currently accredited by ACICS. Mr. Bayles responded that the Bureau is taking a proactive approach by identifying all the ACICS accredited schools, looking at discipline history, the programs they offer, and the student population that could be affected.

Public Comment

No public comment.

Annual Report (AR) Report

Mr. Bayles stated that the Annual Report is open for submissions. He noted that the 2020 annual reports are due by December 1, 2021.

Mr. Bayles reported that the Annual Report unit is now offering School Performance Fact Sheets (SPFS) virtual workshops. He listed the following upcoming virtual workshop dates: September 17, 2021, October 12, 2021, and November 16, 2021. He stated that information on how to register for the SPFS workshop is available on the Bureau's website.

Public Comment

No public comment.

Quality of Education Report

Mr. Bayles provided a report on the Quality of Education Unit (QEU). He outlined Attachment 5e, of the meeting packet.

Mr. Bayles asked the Committee if there is any additional information they would like to see at the next meeting.

Ms. Reiter stated that it would be helpful if a chart was included that showed the breakdown by accreditor for non-degree granting schools.

Mr. Holt stated that in the accreditor chart it would be better to list the number of schools accredited by the Accrediting Commission for Community and Junior Colleges (ACCJC) and WASC Senior College and University Commission (WSCUC) schools instead of just listing the total number of schools accredited by WASC. He also suggested listing the schools that are on accreditation probation or a show cause status. Ms. Reiter agreed it would be a good idea to list schools that are on some kind of discipline status.

Ms. Lee-Carey requested, at the next meeting, a brief explanation and timeline on the process QEU takes in the review of non-accredited institutions applying for approval.

Public Comment

No Public Comment.

Compliance and Discipline Report

Michele Alleger, Bureau Compliance Manager, reported on the compliance stats in Attachment 5f, of the meeting packet.

Christina Villanueva, Bureau Discipline Manager, reported on the discipline and citation stats in Attachment 5f, of the meeting packet.

Public Comment

No Public Comment.

Complaint and Investigation Report

Karen Borja, Bureau Complaint Investigations Manager, and Clarisa Serrato-Chavez, Bureau Complaint Investigations Manager, reported on the complaint and investigation stats in Attachment 5g, of the meeting packet.

Mr. Vice questioned if the fees assessed to institutions who contract with the Bureau for complaint processing cover the associated Bureau expenses. Ms. Cochrane indicated that the state authorization fee is addressed in Attachment 5a, the Alternative Fee Proposal.

Public Comment

Angela Perry provided public comment.

Licensing Report

Bureau Licensing Chief, Ebony Santee, reported on the Licensing Unit. She outlined Attachment 5h, of the meeting packet.

Mr. Holt questioned what the status of the school is while a renewal of approval application is pending. Ms. Santee responded that if an institution submits the renewal application before the expiration of the approval date, then the school may continue to operate while the renewal application is pending.

Public Comment

No Public Comment.

Office of Student Assistance and Relief (OSAR) Report

OSAR Chief, Scott Valverde, provided a report on OSAR. He covered Attachment 5i, of the meeting packet.

Ms. Reiter asked about how many emails that were sent to Corinthian students were returned due to invalid email addresses. Mr. Valverde stated that he didn't have the number with him, but that it was a fairly significant number.

Ms. Reiter commented on the Bureau web page titled "Which School is Right," and indicated that it needs to be updated.

Ms. Reiter pointed out the number of complaints that fall outside of the Bureau's jurisdiction, and that would be helpful if OSAR provided information, at student outreach events, on what falls under the Bureau's jurisdiction. Mr. Valverde noted that OSAR previously analyzed a large sample of complaints to help inform what type of information to provide to students at outreach events.

Mr. Vice asked about the high number and value of STRF claims coming from Silicon Valley students. Mr. Valverde noted that the programs were expensive and many of the students paid cash. Mr. Vice stated that the STRF fee will need to be increased to replenish the fund.

Public Comment

No Public Comment.

Student Tuition Recovery Fund (STRF) Report

Bureau Administration Chief, Yvette Johnson, provided a report on STRF. She covered Attachment 5j, of the meeting packet.

Ms. Johnson noted that the Bureau is currently assessing the STRF fee and will provide institutions ample notice in the event the fee is changed.

Public Comment

No Public Comment.

Agenda Item #6 - Status Updates on Regulations

Status on Application for Verification of Exempt Status

Ms. Johnson provided an update on the application for verification of exempt status regulatory package. She reported that the package was sent to DCA for approval on July 28, 2021.

Discussion on Draft Language for Labor Market Outcome Data Reporting

Ms. Johnson outlined the draft regulatory language for labor market outcome data reporting.

Ms. Lee-Carey questioned if the Bureau's IT system is securely certified to store the collection of sensitive student data including a social security number (SSN) or individual taxpayer identification number (ITIN). David Dumble, Bureau Legislative/Regulation Specialist, explained that the law does not require the collection of students' SSN or ITIN until the Director of DCA certifies the Bureau's IT system is qualified to store the data. He explained that institutions are currently required to collect the data but are not required to report it to the Bureau.

Discussion on Draft Out-of-State Institution Registration Form

Ms. Johnson outlined the draft out-of-state institution registration form.

Ms. Reiter commented that there needs to be a clear directive that all required items must be submitted to complete the application.

Ms. Reiter suggested expanding on the definition of "affiliated institution(s)" to provide clarity.

Ms. Lee-Carey suggested, concerning composite scores and heightened cash monitoring (HCM) documentation in Section 6, that moving "if applicable" to the front of the instructions would provide more clarity. Ms. Reiter noted that it would make more sense to break up Section 6 into two different sections. She added that verification of state authorization would apply to all institutions while the second portion of Section 6 regarding composite score and HCM would not apply to all institutions. Ms. Lee-Carey agreed that it would make sense to have a separate section asking for, if applicable, composite score and HCM status.

Mr. Holt pointed out, in number 5 of Section 8, that it may be better to include "adjudicated" as a qualifier for when to include documentation if the institution has contracted with a third party that had to pay $250,000 or more resulting from a civil complaint made against the third party. Ms. Lee-Carey noted that an institution may not know or have no way of knowing if a third-party entity has been involved in the described instance. Ms. Reiter stated it could suffice to just reference another provision pertaining to the violation of consumer unfair business practices.

Ms. Lee-Carey referenced, in number 7 of Section 8, the requirement of providing the number of known complaints received by a non-profit private organization, such as the Better Business Bureau. She stated that complaints made to the Better Business Bureau (BBB) are different

than complaints made to a government agency. She continued that there is no certainty or understanding of how complaints are processed or resolved through the BBB. She added that an institution is not required to even respond to BBB complaints unless they are a member of the organization. Mr. Holt agreed that complaints received by a non-profit organization should not be required.

Ms. Reiter pointed out that the language in number 7 of Section 8 allows the institution to summarize the complaint and the resolution if the complaint merited one. She continued that some consumers are unsure what government agency to file a complaint with, but many consumers have heard of the BBB. Mr. Holt pointed out the administrative complexity, cost, and burden for an institution with many students all over the country having to search for and summarize complaints from the BBB and other non-profit organizations. Ms. Reiter noted that her understanding is that BBB will forward complaints to the address of the business. She added that it would be unusual for an institution to have many complaints unless there was an actual issue with the institution. Ms. Lee-Carey noted that an institution isn't required to keep track or respond to BBB complaints.

Ms. Delgado questioned why additional requirements weren't included in the form. She provided the example of not including documentation on cohort default rates. Ms. Cochrane explained that in drafting the application the focus was on identifying pertinent and timely risk factors to California students. She stated that determining what to include in the registration form was a balance in what information to collect from the institution and the burden on the institution to provide that information. She added that there was a consideration in reviewing public information as part of the review process, but it was determined that may not be allowed under the law. She noted that the Bureau is open to take another look at suggestions. Ms. Reiter requested that the Bureau take a second look at the items she suggested including in the registration form.

Public Comment

Robert Johnson provided public comment.

Angela Perry provided public comment.

Madeline Cooper provided public comment.

Agenda Item #7 - Update and Discussion on Senate Bill 118 (Committee on Budget and Fiscal Review, Chapter 29, Statutes of 2020) Prohibition on Use of Applicants' Criminal History in Admission Decisions (CEC Section 66024.5)

Ms. Cochrane outlined the memo titled "Senate Bill 118 Prohibition on Use of Applicants' Criminal History in Admission Decisions (CEC Section 66024.5)" provided in the meeting packet.

Ms. Reiter commented that within the security guard profession there are prohibitions against getting licensed based on certain crimes. She noted that, while there is a statistically low number of individuals who could be affected, there may need to be additional guidance given on how to address these instances.

Ms. Lee-Carey suggested that, while an institution is not allowed to ask for a student's criminal background, the institution could provide students with a disclaimer outlining what could prevent the student from completing the program, attaining licensure, and/or employment.

Public Comment

Robert Johnson provided public comment.

David Wells provided public comment.

Agenda Item #8 - Discussion on the Bureau's Strategic Plan Framework and Goals

Ms. Cochrane referenced the memo titled "Draft Strategic Plan Framework and Goals for the Bureau for Private Postsecondary Education" provided in the meeting packet

Ms. Reiter commented that many of the goals included in the plan are lacking specificity and are not measurable. She suggested including goals with more specificity and measurables. She provided an example of adding a percentage amount in the goal of increasing the number of inspections conducted. Mr. Holt agreed that achieving the goals requires the Bureau to define and track more tactical measurable outcomes.

Ms. Lee-Carey suggested adding a goal focused on informing and guiding institutions to meet compliance standards.

Ms. Cochrane requested that Committee members provide any additional comments or suggestions to Bureau staff by September 3, 2021.

Public Comment

Angela Perry provided public comment.

Agenda #9 – Suggestions for Future Agenda Items

Ms. Reiter suggested a follow-up to Senate Bill 118.

Mr. Holt suggested a follow-up on the impact of the Silicon Valley closure.

Public Comment

Angela Perry provided public comment.

Agenda #10 – Adjournment

The meeting adjourned at 4:07 pm.

Agenda Item 4

REMARKS BY A REPRESENTATIVE OF THE DEPARTMENT OF CONSUMER AFFAIRS

(Note: May include updates pertaining to the Bureau's Operations, Human Resources, Department's Administrative Services, Fees, Enforcement, Information Technology and BreEZe, Communications and Outreach, as well as Regulatory and Policy Matters)

Agenda Item 5

BUREAU OPERATIONS UPDATE RELATED TO THE FOLLOWING:

a. IT Systems Project
b. Annual Reports (AR) Report
c. Quality of Education Report
d. Compliance and Discipline Report
e. Complaint and Investigation Report
f. Licensing Report
g. Office of Student Assistance and Relief (OSAR) Report
h. Student Tuition Recovery Fund (STRF) Report

Agenda Item 5a

UPDATE ON THE BUREAU'S IT SYSTEM PROJECT

Agenda Item 5b

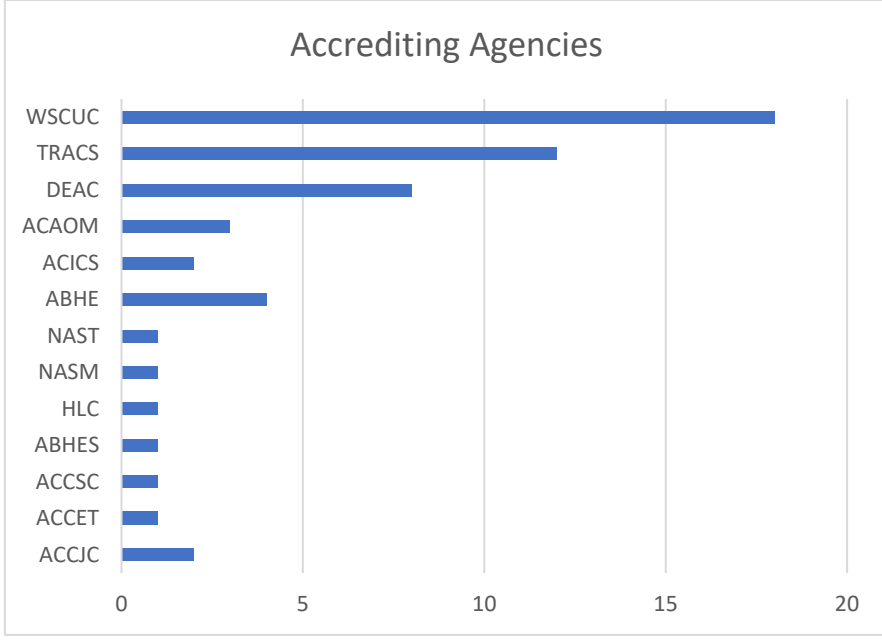
ANNUAL REPORT (AR) REPORT

Agenda Item 5c

UPDATE ON QUALITY OF EDUCATION REPORT

SB 1247 Institutions that Achieved Accreditation & Accreditor Chosen

ACCJC	2
ACCET	1
ACCSC	1
ABHES	1
HLC	1
NASM	1
NAST	1
ABHE	4
ACICS	2
ACAOM	3
DEAC	8
TRACS	12
WSCUC	18
Total	55



ABHE: Association for Biblical Higher Education
ABHES: Accrediting Bureau of Health Education Schools
ACAOM: Accrediting Commission for Accupuncture & Oriental Medicine
ACCJC: Accrediting Commission for Community and Junior Colleges
ACCET: Accrediting Council for Continuing Education & Training
ACCSC: Accrediting Commission of Career Schools and Colleges
ACICS: Accrediting Commission for Independent Colleges and Schools
HLC: Higher Learning Commission
DEAC: Distance Education Accrediting Commission
NASM: National Association of Schools of Music
NAST: National Association of Schools of Theater
TRACS: Transnational Association of Christian Colleges and Schools
WSCUC: WASC Senior College and University Commission

STATUS OF SB 1247 INSTITUTIONS

CEC 94885.1 Schools (Approved to Offer Degree Programs as of Jan 1, 2015)

Closed or Approval Expired	48
Exempt	18
Surrendered Degree Program(s)	21
Currently Suspended	5
Accredited	44
On Approved Extension	**6**
TOTAL	142

CEC 94885.5 Schools (Provisionally Approved to Offer Degree Programs)

Closed	11
Exempt	2
Surrendered Degree Program(s)	7
Currently Suspended	4
Accredited	11
Pursuing Accreditation	**32**
Total	67

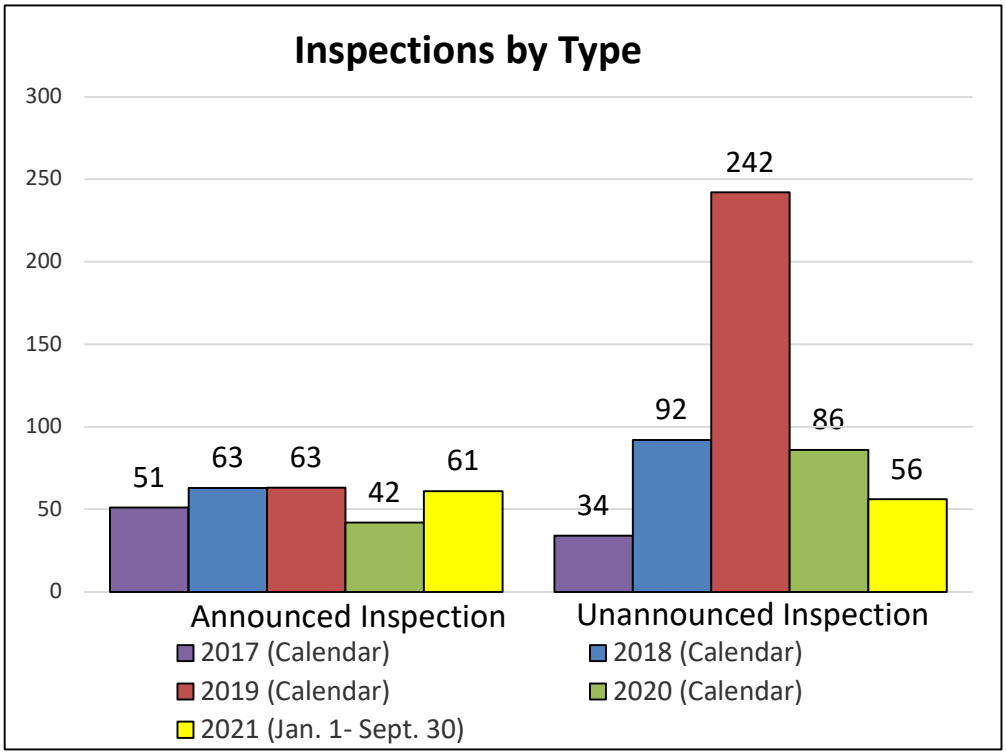
Number of institutions since 2015 whose degree programs were suspended:
2015 - 11
2016 - 0
2017 - 13
2018 - 1
2019 - 6
2020 - 12
2021 - 2

Agenda Item 5d

COMPLIANCE AND DISCIPLINE REPORT

REPORTING AS OF: September 30, 2021					
Compliance Stats	**2017 (Calendar)**	**2018 (Calendar)**	**2019 (Calendar)**	**2020 (Calendar)**	**2021 (Jan. 1 - Sept. 30)**
Total Completed Inspections	85	155	305	128	117
ACI - Announced Inspections	51	63	63	42	61
UCI - Unannounced Inspections	34	92	242	86	56
Notice To Comply Issued	47	65	49	11	14
Enforcement Referral Issued	36	56	93	26	38
Inspections Cancelled *	N/A**	7	18	12	8

*Causes for Cancellations:
(1) The school closed during inspection process.
(2) The school surrendered approval.
(3) The school refused to allow inspection resulting in further action.
(4) The school was not at the physical location listed in SAIL.
(5) The renewal to operate was denied.
**Not Applicable because this data was not being collected in 2017.



2017 (Calendar) Total Inspections: 85
2018 (Calendar) Total Inspections: 155
2019 (Calendar) Total Inspections: 305
2020 (Calendar) Total Inspections: 128
2021 (Jan. 1 - Sept. 30) Total Inspections: 117

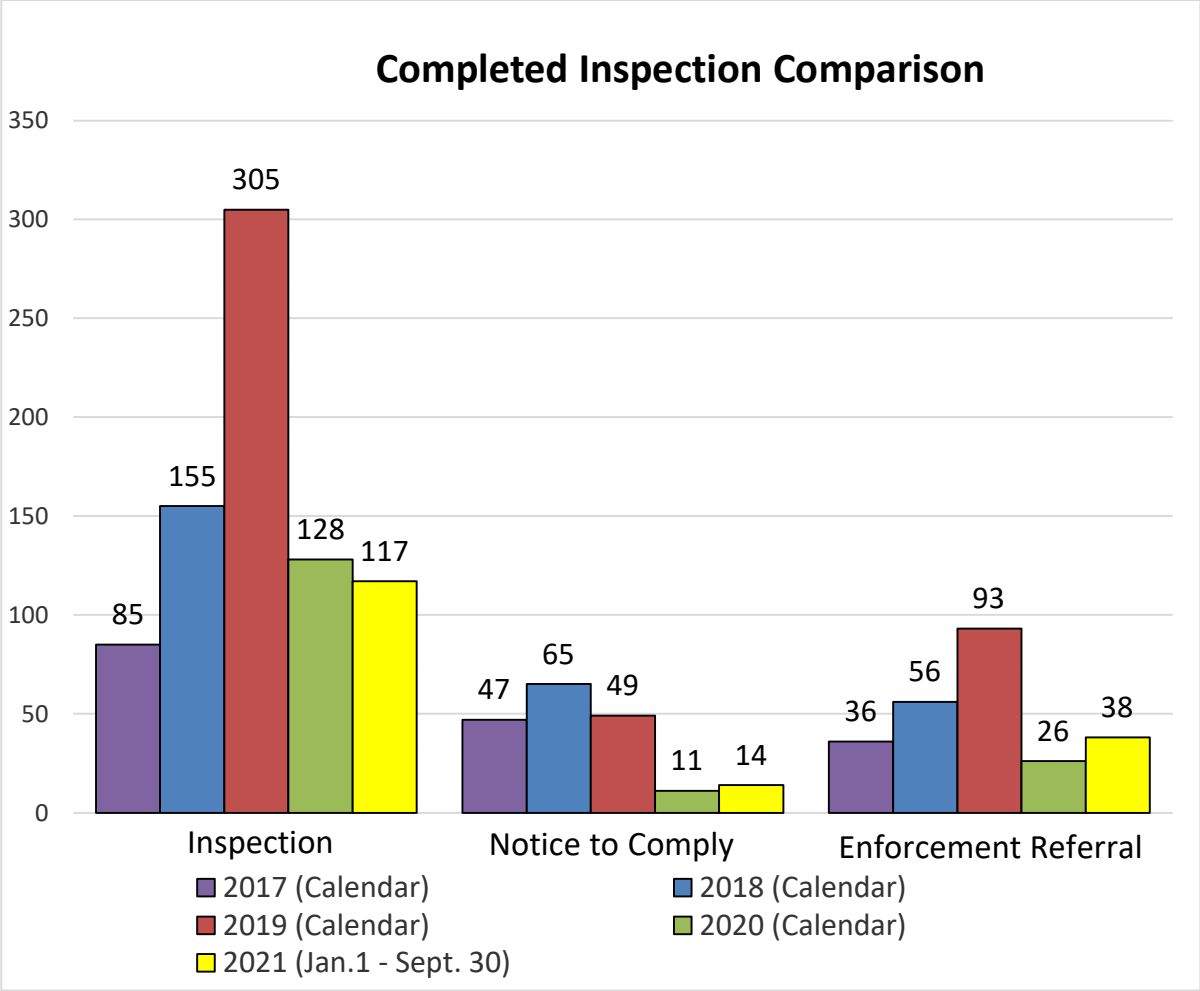
2017 (Calendar) Percentages:
Announced: 60.0
Unannounced: 40.0

2018 (Calendar) Percentages:
Announced: 40.6
Unannounced: 59.4

2019 (Calendar) Percentages:
Announced: 20.7
Unannounced: 79.3

2020 (Calendar) Percentages:
Announced: 32.8
Unannounced: 67.2

2021 (Jan.1 - Sept. 30) Percentages:
Announced: 52.1
Unannounced: 47.9



	2017 (Calendar)	2018 (Calendar)	2019 (Calendar)	2020 (Calendar)	2021 (Jan.1 - Sept. 30)
Announced Compliance Inspection (ACI)	51	63	63	42	61
Unannounced Compliance Inspection (UCI)	34	92	242	86	56
Total Compliance Inspections Completed (ACI + UCI)	85	155	305	128	117
Notice to Comply (NTC)	47	65	49	11	14
Enforcement Referral (ER)	36	56	93	26	38

STATEMENT OF ISSUES

Actions	2018 (Calendar)	2019 (Calendar)	2020 (Calendar)	2021 (Jan. 1- Sept. 30)
In-House Default: Denial Upheld	6	0	0	0
Proposed Decision: Denial Upheld	2	5	0	1
Proposed Decision: Conditional Approval Granted	0	1	0	0
Stipulated Settlement: Denial Upheld (School Closure)	1	0	0	0
Stipulated Settlement: Conditional Approval Granted	1	0	0	0
Withdrawn: Approval Granted (Mitigation cured deficiencies)	11	13	7	2
Withdrawn: Denial Upheld (School withdrew appeal)	7	6	6	1
Withdrawn: Exempt Institution	1	1	2	2
Totals:	29	26	15	6

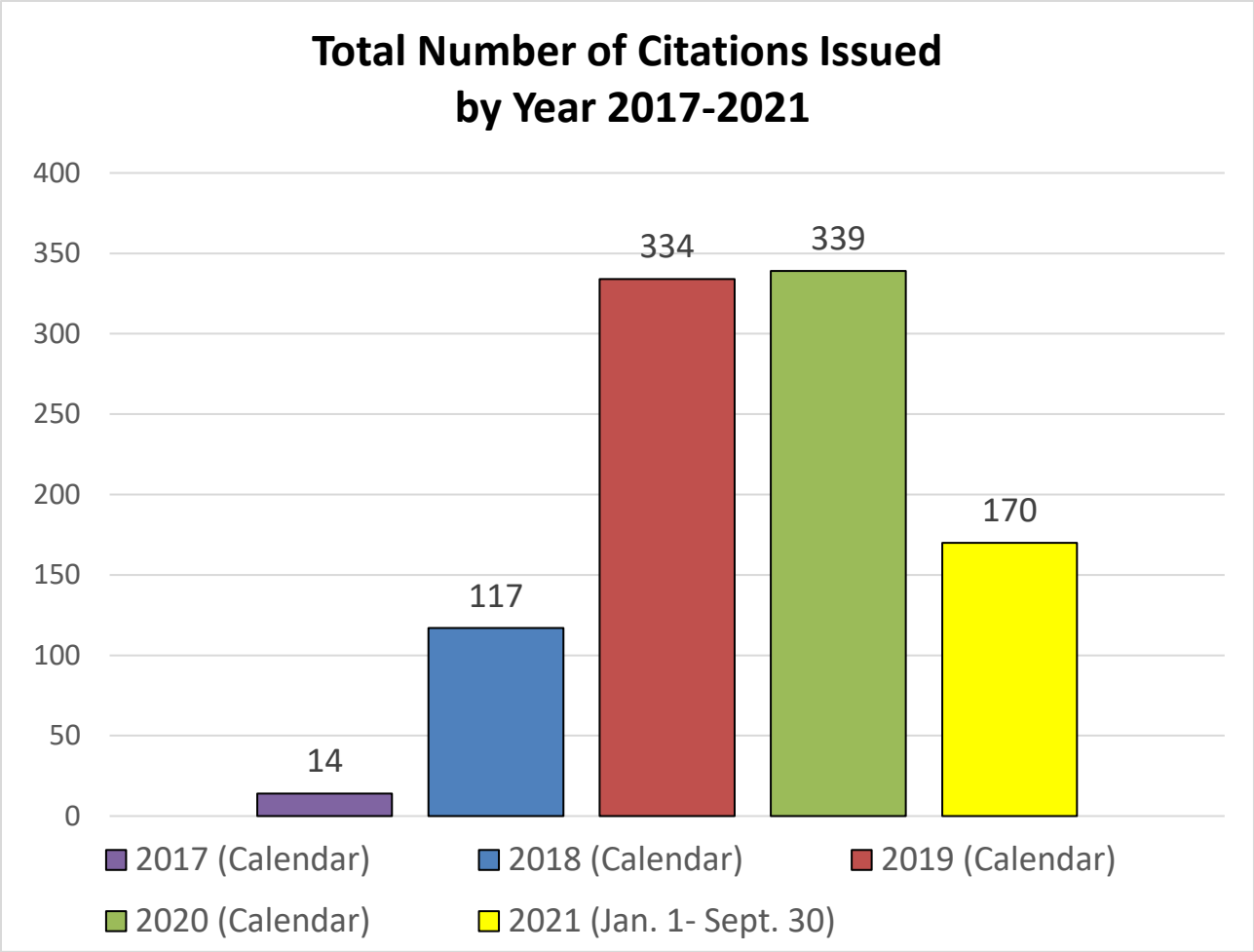
ACCUSATIONS

Actions	2018 (Calendar)	2019 (Calendar)	2020 (Calendar)	2021 (Jan. 1 -Sept. 30)
Default: Revocation	1	0	5	4
PC 23	1	1	0	0
Proposed Decision: Probation Granted	0	1	0	0
Proposed Decision: Revocation	1	0	1	0
Rejected by DAG	0	3	0	1
Stipulated Settlement Probation	0	5	1	1
Stipulated Surrender	2	4	4	4
Stipulated Settlement - Public Reproval	0	0	1	0
Withdrawn By Bureau: Citation Issued	1	1	0	0
Withdrawn by Bureau: Renewal Granted	2	0	0	0
Totals:	8	15	12	10

Automatic Suspensions	2018 (Calendar)	2019 (Calendar)	2020 (Calendar)	2021 (Jan. 1- Sept. 30)
Automatic Suspensions	1	4	13	2

Emergency Decisions	2018 (Calendar)	2019 (Calendar)	2020 (Calendar)	2021 (Jan. 1- Sept. 30)
Emergency Decisions	4	1	1	0

Pending with AG as of 09/30/2021	Total Transmitted	Total Served of Transmitted
Accusations	8	5
Statement of Issues	3	2
Totals:	11	7



	2017 (Calendar)	2018 (Calendar)	2019 (Calendar)	2020 (Calendar)	2021 (Jan. 1-Sept. 30)
Citations Issued	14	117	334	339	170
Number of Schools Cited	14	115	308	333	170

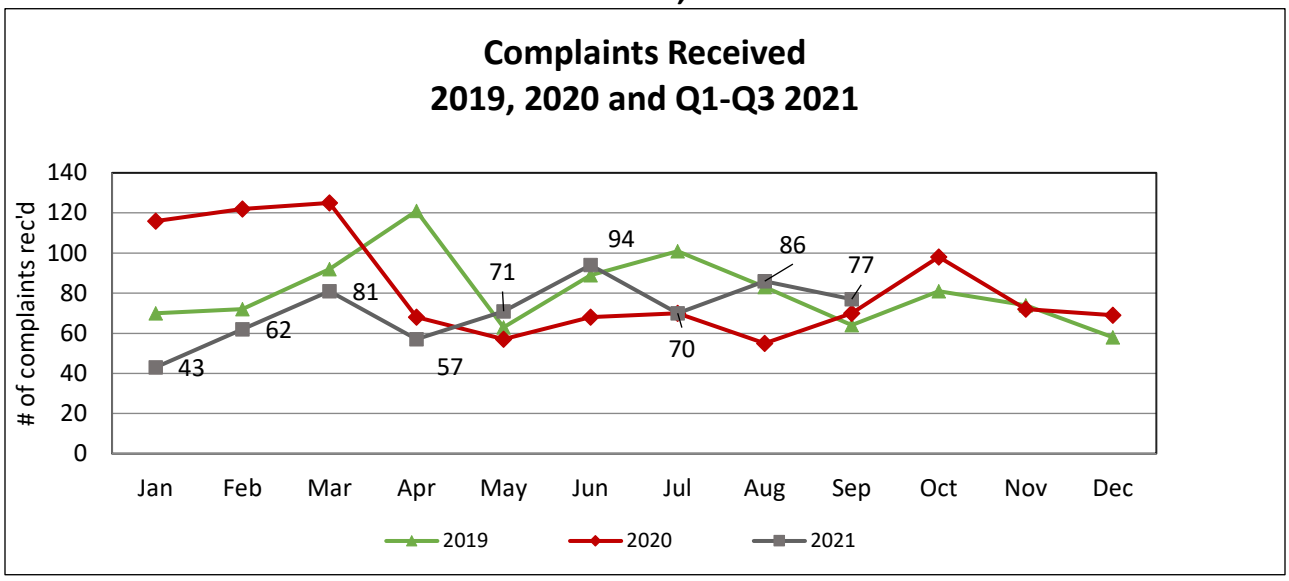
For the past four years, the most common violations for which citations are issued are:

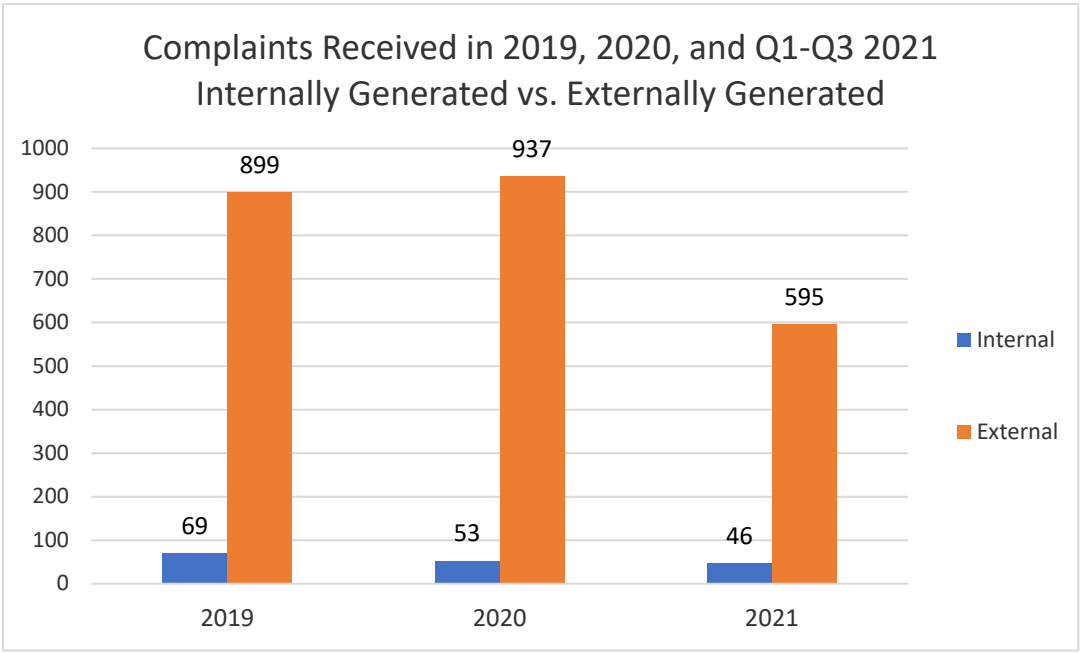
-Operating an unapproved institution (unlicensed activity).
-Failure to submit Annual Fee and/or Student Tuition Recovery Fund Assessment.
-Failure to submit Annual Report and/or School Performance Fact Sheet.

Agenda Item 5e

COMPLAINT AND INVESTIGATION REPORT

COMPLAINT INVESTIGATIONS STATISTICS
BPPE Advisory Committee Meeting
November 3, 2021

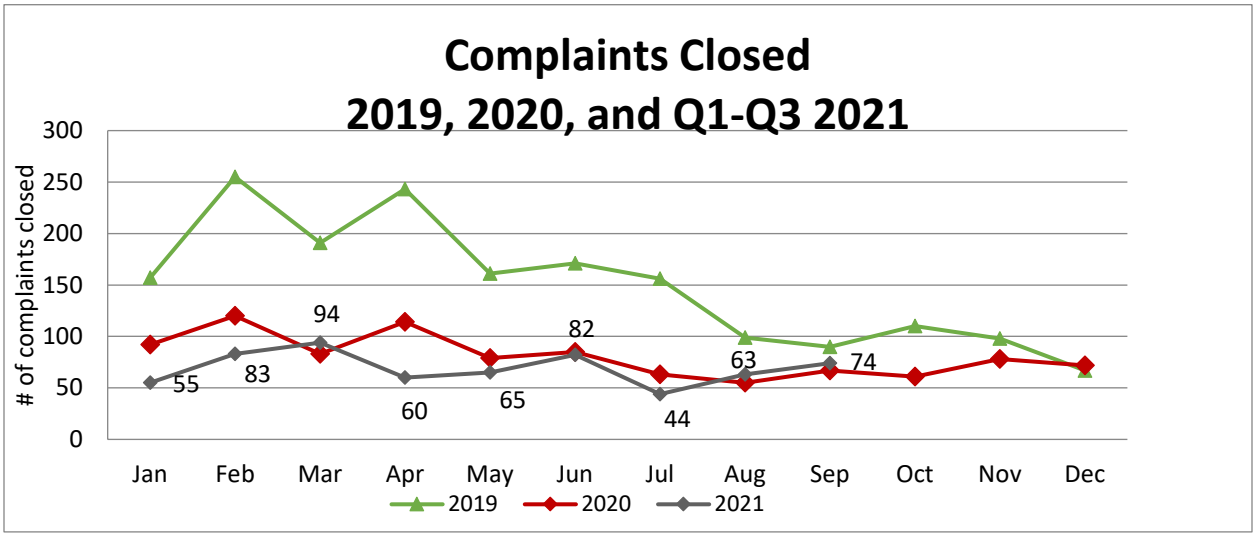




Q1-Q3 Complaints	
Total complaints received	641
Total schools receiving complaints	379
COVID related complaints received	86
COVID related complaints closed	85

Q1-Q3 Contracted School Complaints	
Contracted complaints rec'd	36
Contracted complaints closed	35

COMPLAINT INVESTIGATIONS STATISTICS
BPPE Advisory Committee Meeting
November 3, 2021

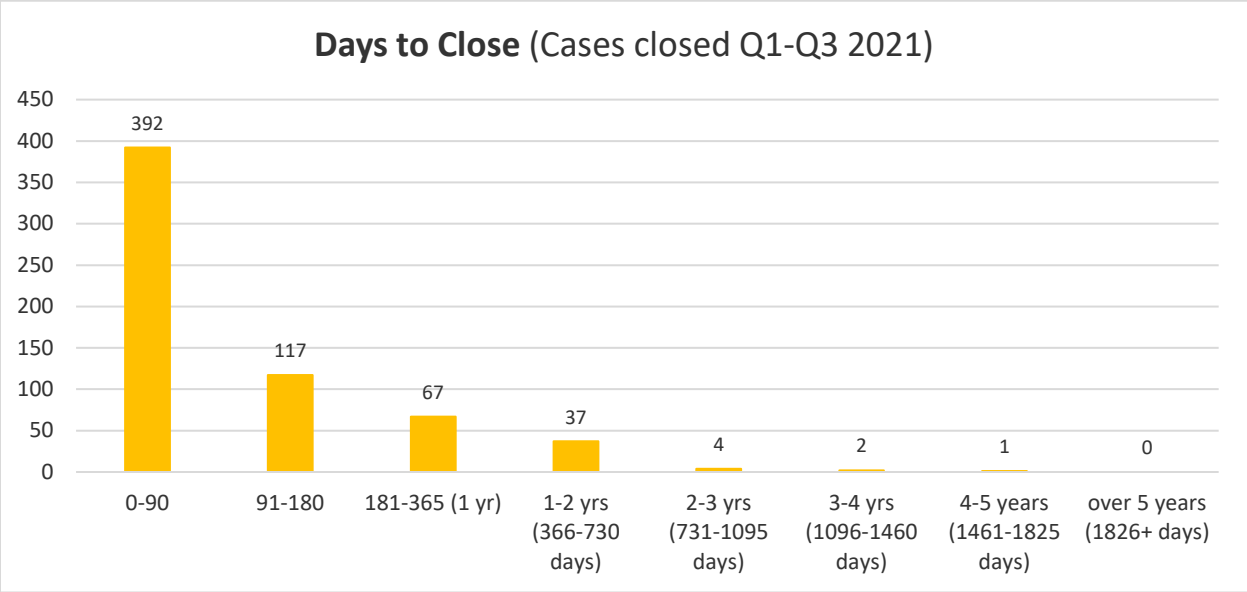


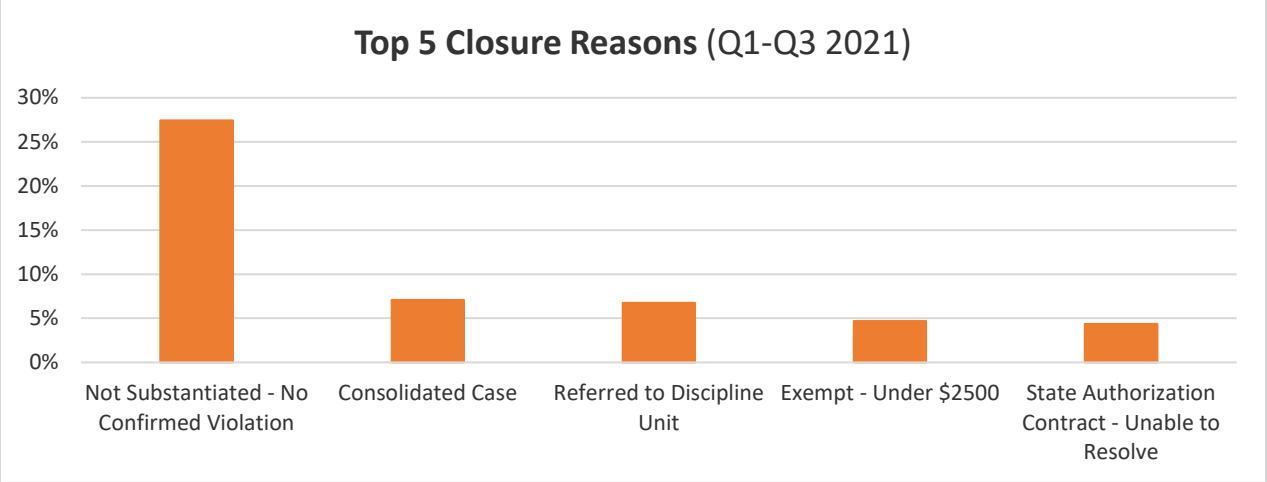
CASE DISPOSITION - Q1-Q3	%	#
Referrals to Discipline Unit for further action*	7%	42
Compliance Obtained	1%	5
Mediated Settlement and Resolved by School	8%	52
Non-Jurisdictional - Closed Schools/STRF	4%	27
Non-jurisdictional - Referrals to Other Agency	10%	61
Exempt	13%	83
Duplicate Entry	4%	27
Consolidated Case	7%	45
Not Substantiated - No Confirmed Violation	27%	170
Not Substantiated - Insufficient Evidence to Confirm Violation	8%	50
Other Closure Reasons	4%	23
State Authorization Contract - Mediated Settlement	1%	7
State Authorization Contract - Unable to Resolve	4%	27
State Authorization Contract - Referred to Other Agency	0%	1
TOTAL	100%	620

**Transferred to the Discipline Unit. Discipline Unit determines whether further action is citation or disciplinary action.*

Q1 – Q3 Closed Complaints	
Month	**2021**
Jan	55
Feb	83
Mar	94
Apr	60
May	65
Jun	82
Jul	44
Aug	63
Sep	74
Total	620

COMPLAINT INVESTIGATIONS STATISTICS
BPPE Advisory Committee Meeting
November 3, 2021



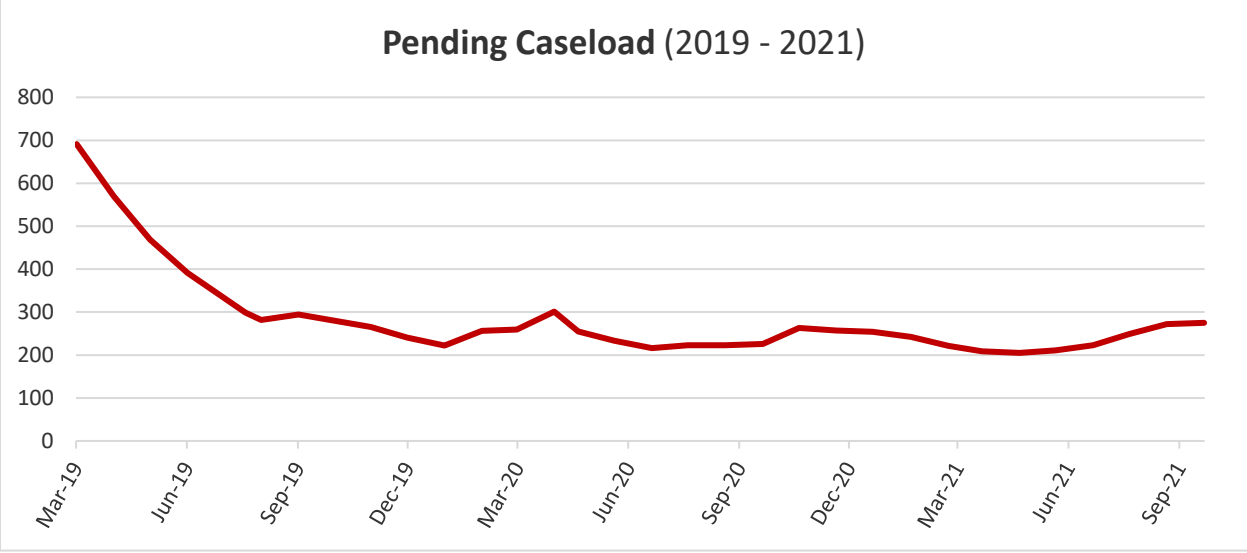


COMPLAINT INVESTIGATIONS STATISTICS
BPPE Advisory Committee Meeting
November 3, 2021

PENDING CASELOAD AS OF 9/30/21

	#	%	#	%	#	%
0-90	144	52.4%	97	53.0%	48	59.3%
91-180	61	22.2%	39	21.3%	23	28.4%
181-365 (1 yr)	36	13.1%	24	13.1%	8	9.9%
1-2 yrs (366-730 days)	24	8.7%	16	8.7%	2	2.5%
2-3 yrs (731-1095 days)	5	1.8%	3	1.6%	0	0.0%
3-4 yrs (1096-1460 days)	4	1.5%	4	2.2%	0	0.0%
4-5 years (1461-1825 days)	1	0.4%	0	0.0%	0	0.0%
over 5 years (1826+ days)	0	0.0%	0	0.0%	0	0.0%
TOTAL	**275**	**100%**	**183**	**100%**	**81**	**100%**

67% of pending **29% of pending**



COMPLAINT INVESTIGATIONS STATISTICS
BPPE Advisory Committee Meeting
November 3, 2021

Student Impact (January – September 2021)

- Total of **$52,721.74** in refunds to students or to their federal student aid account.
- Students received degree, diploma, proofs-of-training, certificate, license, and transcripts.
- Students re-enrolled in program.
- Students allowed to retake course at no additional cost.
- Students referred for Student Tuition Recovery Fund.
- Students placed in externships.
- Compliance obtained or school policy updated.

Agenda Item 5f

LICENSING REPORT

Licensing Applications Status as of October 1, 2021 for Fiscal Year 21/22

Type	Received FY 21/22	Pending Assignment (Queue)	Under Review	Total Pending	Approved	Withdrawn or Abandoned	Denied	Total Closed	Average Days to Approve[a]
New Full Approval	8	12	49	61	9	5	3	17	467
New Accreditation	10	0	15	15	7	2	0	9	119
Renewal Full	11	0	100	100	11	1	0	12	570
Renewal Accreditation	14	0	32	32	14	1	0	15	255
Changes Full	29	0	70	70	36	3	2	41	159
Changes Accreditation	43	0	67	67	49	7	0	56	37
Verification of Exemptior	59	0	38	38	65	0	16	81	58
Out of State Registration	20	0	13	13	15	2	0	17	20
Totals:	**194**	**12**	**384**	**396**	**206**	**21**	**21**	**248**	**211**

[a]Average Days to Approve is calculated from time assigned to analyst.

*20 applications pending new term of accreditation.

Oldest Pending Full Applications (as of 10/1/2021)

Oldest Full Apps in Queue:	5/17/2021	Application incomplete.
Oldest Full Apps Under Review:	1/30/2019	Application w/QEU. Response has been mailed
Oldest Renewal Full Apps Under Review:	4/10/2017	Discipline Issues
Median Date of Full Apps in Queue:	7/6/2021	

Total Number of Schools by Location Type & Approval Type

Location Type	Mains	Branches	Satellites	Total
	960	**357**	**510**	**1,827**
Approval Type	**ABMA (Accredited)**	**Full (Non-Accredited)**	**Conditional[a]**	**Provisional[b]**
	409	**520**	**1**	**30**

[a]Conditional Approvals are issued for a period up to six months when minor deficiencies exist but the institution is substantially in compliance with the requirements of the laws and regulations (California

[b]Provisional Approvals are issued to unnaccredited instititions seeking approval to offer one or more degree programs and must satisfy the requirements under California Education Code section 94885.5.

Approved Out of State Registrations as of 5/1/2021
75

Agenda Item 5g

OFFICE OF STUDENT ASSISTANCE AND RELIEF (OSAR) REPORT

Office of Student Assistance and Relief

2021/22 State Fiscal Year

Data as of October 11, 2021

CHART A: INFORMED CHOICE OUTREACH AND EDUCATIONAL ACTIVITIES

Student Outreach Activity	Event Type	Event Date	Event Location	Total Students Served
California Transition Assistance Program Homeport California, Camp Pendleton Virtual Workshop	Virtual Student Workshop / Presentation	7/8/2021	Yuba County, CA	28
California Transition Assistance Program Travis Air Force Base Virtual Workshop	Virtual Student Workshop / Presentation	7/9/2021	Travis Air Force Base, CA	22
California Transition Assistance Program Beale Air Force Base Virtual Workshop	Virtual Student Workshop / Presentation	7/22/2021	Riverside County, CA	11
Informational Meeting for Independence University Students	Virtual Student Workshop / Presentation	8/10/2021	Virtual Event	484
California Transition Assistance Program Presidio of Monterey Virtual Workshop	Virtual Student Workshop / Presentation	8/13/2021	Monterey, CA	27
California Transition Assistance Program Marine Corps Recruit Depot Virtual Workshop	Virtual Student Workshop / Presentation	9/2/2021	San Diego, CA	22
California Transition Assistance Program Naval Air Station Lemoore Virtual Workshop	Virtual Student Workshop / Presentation	9/8/2021	Kings County, CA	13
California Transition Assistance Program Fort Irwin Virtual Workshop	Virtual Student Workshop / Presentation	9/8/2021	Fort Irwin, CA	17
California Transition Assistance Program Travis Air Force Base Virtual Workshop	Virtual Student Workshop / Presentation	9/10/2021	Travis Air Force Base, CA	11
California Transition Assistance Program Strategies to Support Your College Savings Goals	Virtual Student Workshop / Presentation	9/16/2021	Virtual Event	12
Latino College Expo	Virtual College Fair	9/18/2021	Virtual Event	354
California Transition Assistance Program Vandenberg Air Force Base Virtual Workshop	Virtual Student Workshop / Presentation	9/24/2021	Vandenberg Air Force Base, CA	21
California Transition Assistance Program Education Benefits Virtual Workshop at City College of San Francisco	Virtual Student Workshop / Presentation	10/7/2021	San Francisco, CA	30

CHART B: CLOSED SCHOOL OUTREACH WORKSHOPS

Student Outreach Activity	Event Type	Event Date	Event Location	Total Students Served
California College San Diego Virtual School Closure Outreach Event	Virtual Student Workshop	8/4/2021	San Diego, CA	251

CHART C: OTHER CLOSED SCHOOL OUTREACH EFFORTS

Student Outreach Activity	Outreach Type	Date Conducted	School Location	Total Students Served
General Assembly (Branch)	Email	7/6/2021	Santa Monica, CA	7
American Tech and Management University, Inc.	Email	7/6/2021	Pleasanton, CA	23
Advanced Computer Training Schools dba Alliance Career Training Schools	Email	7/6/2021	Salinas, CA	18
Fashion Institute of Design & Merchandising (Branch)	Email	7/6/2021	San Francisco, CA	57

CHART C: OTHER CLOSED SCHOOL OUTREACH EFFORTS (CONTINUED)

Student Outreach Activity	Outreach Type	Date Conducted	School Location	Total Students Served
Heavy Equipment Colleges of America (Branch)	Email	7/8/2021	Fort Irwin, CA	10
Hackbright Academy	Email	7/14/2021	San Francisco, CA	94
Intrax English Academies, LLC d/b/a Stafford House International (Main)	Email	8/5/2021	San Francisco, CA	10
Intrax English Academies, LLC d/b/a Stafford House International (Branch)	Email	8/5/2021	San Diego, CA	10
California International University	Email	9/2/2021	Los Angeles, CA	28
Santa Barbara Business College (Branch)	Email	9/15/2021	Rancho Mirage, CA	2
160 California, LLC dba 160 Driving Academy (Branch)	Email	9/16/2021	Oceanside, CA	23
American University of Complementary Medicine (Program)	Email	9/16/2021	Beverly Hills, CA	11
St. Giles Colleges Inc.	Email	9/22/2021	San Francisco, CA	214
NTMA Training Centers of Southern California (Branch)	Email	9/23/2021	Ontario, CA	35
California Medical College	Email	9/23/2021	San Diego, CA	25
College of Botanical Healing Arts	Email	9/23/2021	Santa Cruz, CA	13

Agenda Item 5h

STUDENT TUITION RECOVERY FUND (STRF) REPORT

Student Tuition Recovery Fund (STRF) Claims

2020/2021 State Fiscal Year (07/01/2020 to 06/30/2021)

2021/2022 State Fiscal Year (07/01/2021 to Current)

STRF Claims Received		
State Fiscal Year	**20/21 End of Year**	**21/22 Year to Date**
Claims Received	1,337	191

STRF Claims Closed		
State Fiscal Year	**20/21 End of Year**	**21/22 Year to Date**
Claims Approved [1]	457	29
Claims Ineligible [2]	79	19
Claims Denied [2]	171	9
Unable to Contact [3]	138	50
Total	845	107

Current STRF Claims		
State Fiscal Year	**20/21 End of Year**	**21/22 Year to Date**
In Queue	796	820
Analyst Review	153	170
Waiting for Student Response	198	157
Analyst's First Review Complete / Recommendation Pending	169	238
Total	1316	1385

STRF Claims Approved for Payment (Amount)		
State Fiscal Year	**20/21 End of Year**	**21/22 Year to Date**
Amount	$6,492,131.21	$254,314.86

STRF Claims Pending Payment - State Controller's Office		
State Fiscal Year	**20/21 End of Year**	**21/22 Year to Date**
Amount	$238,559.91	$198,575.32
Claims	15	11

Definitions

Claims Approved [1]	Claims Approved For Payment/Paid
Ineligible / Denied [2]	Student Not Eligible For Payment and/or Claim Did Not Satisfy The Requirements of California Education Code §94923(b)(2)
Unable to Contact [3]	Staff Reached Out to Student via Phone, Email & Written Correspondence At Least Three Times

Current Fund Balance:	$15,428,439

Historical Fund Balances (State Fiscal Year Closing):

2020-21	$15,817,000
2019-20	$21,723,000
2018-19	$25,100,695
2017-18	$26,295,000
2016-17	$28,497,000

Data as of: 10/15/2021

Student Tuition Recovery Fund Claims

Large Impact Closures
From School Closure to Current (Total Impact)

	STRF Claims Received	STRF Claims Pending	Ineligible / Denied	Unable to Contact	Number of STRF Claims Approved	Dollar Amount Paid to Student/Loan	Dollar Amount Paid - Ed Credit (To New School)	Total Dollar Amount Paid
Heald [2]	487	246	85	76	80	$730,746	$28,535	$759,281
WyoTech [2]	168	32	45	36	55	$298,644	$0	$298,644
Everest [2]	554	204	127	110	113	$469,717	$0	$469,717
ITT Technical Institute	307	6	155	82	64	$464,672	$37,254	$501,926
Art Institute [3]	99	12	25	7	55	$734,933	$0	$734,933
Argosy [3]	103	21	13	31	38	$517,346	$8,571	$525,917
Silicon Valley	1177	891	3	5	278	$5,108,945	$0	$5,108,945
Brightwood [4]	395	17	27	69	282	$1,312,578	$4,000	$1,316,578
Golf Academy [4]	17	2	1	1	13	$136,311	$0	$136,311

[1] These values may include STRF claims that were received prior to the 2021/22 State Fiscal Year but processed in the 2021/22 State Fiscal Year.

[2] Heald College, WyoTech, and Everest College were operated by Corinthian Colleges, Inc. - "STRF Claims Pending" includes claims that are awaiting a decision on their Federal Borrower Defense applications.

[3] The Art Institute of California and Argosy University were operated by Dream Center Education Holdings, LLC.

[4] Brightwood College and Golf Academy of America were operated by Education Corporation of America.

Data as of 10/15/2021

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY • GAVIN NEWSOM, GOVERNOR
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ISSUE MEMORANDUM

DATE	October 22, 2021
TO	Advisory Committee Members
FROM	Debbie Cochrane, Bureau Chief
SUBJECT	**Silicon Valley University Closure and STRF Impact**

California Education Code (CEC section 94923(a)) establishes the Student Tuition Recovery Fund which "relieves or mitigates economic loss suffered by a student while enrolled in an institution not exempt from this article pursuant to Article 4 (commencing with Section 94874), who, at the time of the student's enrollment, was a California resident or was enrolled in a California residency program, prepaid tuition, and suffered economic loss."

CEC section 94923(b) defines eligible students as including:

- Students enrolled at the time of an institutional closure;
- Students enrolled within 120 days before the closure;
- Students enrolled more than 120 days before the closure if the Bureau determines there was a significant decline in the quality or value of the program; and
- Any other students the Bureau deems appropriate.

Silicon Valley University (SVU) offered a master's degree program in computer science, at a cost of approximately $18,000 per student. SVU was accredited by the Accrediting Council for Independent Colleges & Schools (ACICS). The U.S. Department of Education terminated its recognition of ACICS as a nationally recognized accrediting agency on December 12, 2016. About one year later, on December 7, 2017, ACICS revoked its accreditation of SVU. On December 27, 2017, the Bureau filed an accusation to revoke or suspend SVU's approval to operate. SVU closed April 13, 2018 and surrendered its approval to operate on February 24, 2019.

Key Factors Relevant to STRF:

- The school's accreditation troubles rendered many students unable to secure employment. Virtually all STRF claimants restarted their degree program at a new school, into which very few credits, if any, transferred.
- SVU provided refunds to students enrolled within 120 days prior to the closure. Because the accreditation challenges took place more than 120 days prior to the closure, many students experienced economic loss outside of that window.

- The school enrolled primarily foreign students in the United States with F1 student visas. These students did not receive federal financial aid and were thus ineligible for federal relief.
- Several factors, including outreach by the Office of Student Assistance and Relief combined with students' word-of-mouth, contributed to higher than typical rates of STRF claim filing. The Bureau reviews and evaluates each pending claim individually, ensuring it has sufficient documentation of each students' individual economic loss.

Key SVU STRF Claim Data, as of October 14, 2021:

- 1,177 STRF claims filed.
- 278 STRF claims approved; $5.1 million paid.
- 8 STRF claims denied (3% of processed applications).
- 891 STRF claims pending; potential payout of $16.5 million.

Agenda Item 6

STATUS UPDATE AND DISCUSSION RELATED TO THE FOLLOWING REGULATIONS:

a. Discussion of STRF Fee Increase Proposal (CCR Section 76120)

b. Status Update on Application for Verification of Exempt Status (California Education Code (CEC) Sections 94874, 94874.2, 94874.7, 94874.5, and 94927.5; Title 5, California Code of Regulations (CCR) Section 71395)

c. Status Update on Draft Language for Labor Market Outcome Data Reporting (CCR Sections 74110(d)(e), and 74112(o), CEC Section 94892.6, Assembly Bill (AB) 1340 (Chiu, Chapter 519, Statutes of 2019))

d. Status Update on Draft Out-of-State Institution Registration Form (CCR Section 71396, CEC Section 94801.5, AB 1344 (Bauer-Kahan, Chapter 520, Statutes of 2019))

ATTACHMENT:

1. BPPE Regulation Summary

BPPE Regulation Summary as of October 22, 2021

Sec #	Short Title	Action	Description	Pre-Approve	Legal Review	Dept.	Agency	OAL	Notice	Hearing	OAL Final	File SoS
71395	Exempt status	Amend	Verification of Exempt Status amends the form to reflect numerous statutory changes.		10-14-21 returned from DCA with comments							
74110, 74112	AB 1340	Adopt	Establish data collection system for student wage data.	Internal review completed.	Submitted to DCA on 10-18-21.							
71396	AB 1344	Adopt	Revise Out-of-State Registration Form	Internal review completed. Finalizing package for submission.								
76120	STRF fee increase	Amend	Increase STRF fee to $2.50 per $1,000	Internal review completed. Finalizing package for submission.								

Agenda Item 7

UPDATE AND DISCUSSION ON RECENTLY CHAPTERED LEGISLATION IMPACTING THE BUREAU (SENATE BILL 802 AND SENATE BILL 607)

Agenda Item 8

DISCUSSION ON RECENT STATE AND FEDERAL ACTIONS ON INCOME SHARE AGREEMENTS AND THEIR RELEVANCE TO THE BUREAU

ATTACHMENT:

1. October 22, 2021 Issue Memo: Recent State and Federal Actions on Income Share Agreements and their Relevance to the Bureau for Private Postsecondary Education

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ISSUE MEMORANDUM

DATE	October 22, 2021
TO	Advisory Committee Members
FROM	Debbie Cochrane, Bureau Chief
SUBJECT	**Recent State and Federal Actions on Income Share Agreements and their Relevance to the Bureau for Private Postsecondary Education**

Many Bureau approved schools have sought to offer Income Share Agreements (ISAs), through which students pay a percentage of their post-enrollment income for a defined period or up to a defined amount in lieu of paying tuition upfront. As the Bureau has previously noted, the Private Postsecondary Education Act does not explicitly address ISAs, and "ISAs currently function in a 'legal gray zone,' as '[n]o major regulators have drafted rules specifically to address them.'"[1] This ambiguity has made it difficult for the Bureau to proactively address the use of ISAs.

Prior Bureau analysis considered ISAs as "a tuition model," concluding that the inherently variable nature of amounts paid poses multiple challenges with respect to compliance with Bureau laws and regulations that require disclosure of total costs and base student financial protection on that cost amount. However, recent state and federal actions suggest that ISAs are instead best conceived of as a form of consumer loan or debt, warranting further analysis of how the Bureau can acknowledge these developments and best enforce relevant statute and regulations.

On August 5, 2021, California's Department of Financial Protection and Innovation (DFPI) entered into a consent order with Meratas, Inc., a New York-based ISA provider.[2] The agreement outlines the DFPI Commissioner's finding "that ISAs made solely for use to finance a postsecondary education are "student loans" for the purposes of the [Student Loan Servicing Act]." As part of the agreement, DFPI issued a conditional license to Meratas for student loan servicing and Meratas agreed to report ISAs as "student loans" to DFPI.

[1] See, e.g., Machat, *Catalyzing Innovation with Regulation: Income Share Agreements and the Student Debt Crisis* (2017} 70 Rutgers U. L. Rev. 257, 261.

[2] See "California DFPI Enters Groundbreaking Consent Order with NY-Based Income Share Agreements Servicer," available at: https://dfpi.ca.gov/2021/08/05/california-dfpi-enters-groundbreaking-consent-order-with-ny-based-income-share-agreements-servicer/

On September 7, 2021, the Consumer Financial Protection Bureau (CFPB) took action against an ISA provider "for mispresenting its product and failing to comply with federal consumer financial law that governs private student loans."[3] The violations included "falsely representing that its ISAs are not loan products and do not create debt" and "denying consumers information necessary to fully evaluate their financial options." The CFPB further concluded that ISAs are credit under the federal Truth in Lending Act.

If ISAs are indeed student loan products, they would be subject to various requirements of the Act, including Article 12 of the Act related to consumer loans to students.

The Bureau invites discussion with the Advisory Committee and comments from the public regarding how the DFPI and CFPB actions should inform Bureau operations and oversight. Selected questions for consideration include:

- How do the recent actions of DFPI and the CFPB in characterizing ISAs as student loans inform the Bureau's approach to institutions that offer ISAs?
- Article 12 of the Act uses several terms associated with institutional loans: "extending credit or lending money for institutional and noninstitutional charges," "a note, instrument, or other evidence of indebtedness relating to payment for an educational program," and "consumer loans." Do these terms need further definition through regulation?
- The Bureau is required to monitor institutions' compliance with the Act, including Article 12. How can the Bureau best ensure institutions are complaint with requirements of the Federal Truth in Lending Act pursuant to Title 15 of the United States Code?
- Do current statutory or regulatory provisions pertaining to student refunds or Student Tuition Recovery Fund eligibility require modification to provide appropriate relief to impacted students?
- Are any additional statutory or regulatory provisions necessary for effective oversight of schools offering ISAs?

[3] See "CFPB Takes Action Against Student Lender for Misleading Borrowers about Income Share Agreements," available at: https://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-student-lender-for-misleading-borrowers-about-income-share-agreements/

Agenda Item 9

CONTINUED DISCUSSION ON SENATE BILL 118 (COMMITTEE ON BUDGET AND FISCAL REVIEW, CHAPTER 29, STATUTES OF 2020) PROHIBITION ON USE OF APPLICANTS' CRIMINAL HISTORY IN ADMISSION DECISIONS (CEC SECTION 66024.5)

Agenda Item 10

FUTURE MEETING DATES

2022 Advisory Committee Meeting Dates:

- February 16, 2022
- May 17, 2022
- August 18, 2022
- November 16, 2022

Agenda Item 11

SUGGESTIONS FOR FUTURE AGENDA ITEMS

Agenda Item 12

ADJOURNMENT