February 26, 2024

The Honorable Scott D. Wiener, Chair,
Senate Committee on Budget and
Fiscal Review
1020 N Street, Room 502
Sacramento, CA 95814

The Honorable Jesse Gabriel, Chair
Assembly Committee on Budget
1021 O Street, Room 8230
Sacramento, CA 95814

The Honorable Angelique V. Ashby, Chair
Senate Business, Professions and
Economic Development Committee
1021 O Street, Room 3320
Sacramento, CA 95814

The Honorable Marc Berman, Chair
Assembly Business and Professions
Committee
1020 N Street, Room 379
Sacramento, CA 95814

The Honorable Josh Newman, Chair
Senate Education Committee
1021 O Street, Room 6740
Sacramento, CA 95814

The Honorable Mike Fong, Chair
Assembly Higher Education Committee
1020 N Street, Room 173
Sacramento, CA 95814

Re: Bureau for Private Postsecondary Education – Fee Recommendations

Dear Chairs Wiener, Gabriel, Ashby, Berman, Newman, and Fong:

This correspondence in tandem with the attached report fulfills the requirements of AB 178 (Ting, Chapter 45, Statutes of 2022), which requires the Bureau for Private Postsecondary Education (Bureau) to provide the Legislature with a proposal for a new fee structure to support the Bureau's operations on an ongoing basis.

This letter provides an overview of the current state of the Private Postsecondary Education Administrative Fund, the Foundation for California Community Colleges' (FoundationCCC) work to explore funding dynamics and alternatives, and the Bureau's recommendations for solving the current structural deficit, including relevant context regarding the Student Tuition Recovery Fund.

The State of the Private Postsecondary Education Administrative Fund

The Private Postsecondary Education Administrative Fund (Fund) faces a substantial deficit that threatens the Bureau's ability to protect consumers. In the Current Year, the Bureau is expected to generate a total of $15.3 million in revenue with total authorized expenditures of $22.7 million.[1] This amounts to a structural deficit of $7.4 million, which is partially offset with $6 million General Fund. In the Current Year, due to the Bureau's efforts to address the deficit, cost-cutting measures are projected to generate savings of $3.4 million (for total projected expenditures of $19.3 million).

By Budget Year 2028-29, at current revenue levels and with projected routine growth in expenditures (estimated at 3 percent growth annually), the projected size of the structural deficit may be up to $11 million.[2] The Bureau focuses on Budget Year 2028-29 so that funding solutions considered now will be sufficient to ensure consistency in Bureau operations for the foreseeable future, as is common for assessments of financial viability.

More detail may be found in Table 1 below.

Table 1: Fund Condition, Private Postsecondary Education Administrative Fund

0305 - Private Postsecondary Education Administrative Fund Analysis of Fund Condition
(Dollars in Thousands)
2024-25 Governor's Budget

Prepared 1.10.2024

	ACTUAL 2022-23	CY 2023-24	BY 2024-25	BY +1 2025-26	BY +2 2026-27	BY +3 2027-28	BY +4 2028-29
Adjusted Beginning Balance	$ 8,592	$ 17,651	$ 4,233	$ 1,854	$ -5,964	$ -14,441	$ -23,596
Total Revenues	$ 15,317	$ 15,305	$ 15,221	$ 15,221	$ 15,221	$ 15,221	$ 15,221
Loan Repayment from Fund 0305 to Fund 0421, BA of 2021	$ -	$ -12,000	$ -	$ -	$ -	$ -	$ -
TOTAL RESOURCES	$ 23,909	$ 20,956	$ 19,454	$ 17,075	$ 9,257	$ 780	$ -8,375
Expenditures:							
1111 DCA Regulatory Boards, Bureaus, Divisions (State Ops)	$ 18,504	$ 21,250	$ 21,309	$ 21,948	$ 22,607	$ 23,285	$ 23,983
9892 Supplemental Pension Payments (State Ops)	$ 382	$ 382	$ 291	$ -	$ -	$ -	$ -
9900 Statewide General Admin Exp (Pro Rata) (State Ops)	$ 1,372	$ 1,091	$ -	$ 1,091	$ 1,091	$ 1,091	$ 1,091
Less funding provided by General Fund (State Ops)	$ -14,000	$ -6,000	$ -4,000	$ -	$ -	$ -	$ -
Total Expenditures	$ 6,258	$ 16,723	$ 17,600	$ 23,039	$ 23,698	$ 24,376	$ 25,074
FUND BALANCE	$ 17,651	$ 4,233	$ 1,854	$ -5,964	$ -14,441	$ -23,596	$ -33,449
Months in Reserve	12.7	2.9	1.0	-3.0	-7.1	-11.3	-16.0

NOTES:
1. Assumes workload and revenue projections are realized in BY +1 and ongoing.
2. Expenditure growth projected at 3% beginning BY +1.

The structural deficit faced by the Bureau has been under discussion and scrutiny for several years. Actual expenditures have outpaced revenues generated since 2017-18.

A 2020 report by Capital Accounting Partners, LLC. (CAP), conducted at the request of the Department of Consumer Affairs (DCA), concluded that the Bureau "must either dramatically cut expenses, which will impact its ability to

[1] Authorized expenditures of $22.7 million includes: $21.25 million appropriation plus $382,000 Supplemental Pension Payments and $1.091 million statewide pro rata.
[2] This estimate would be sufficient to allow the Bureau to build a small reserve and support possible future increases to statewide pro rata.

complete its regulatory mission, or it must increase its fees." In 2021, DCA and the Bureau came to similar conclusions regarding the scale of the deficit and proposed an alternative approach to increasing licensing fees to an extent that would bring in sufficient revenue to cover required expenditures. Specifically, this approach focused primarily on annual fees, generating revenue by raising the minimum fee, maximum fee, and the percentage of revenue assessed. (See more about this proposal on page 7). Ultimately, neither approach was effectuated through the legislative process, and accordingly, neither was implemented by the Bureau.

In lieu of fee increases, the Legislature in 2022-23 provided the Bureau with $24 million from the General Fund over three years to stabilize funding and allow the Bureau to explore additional options for revenue sufficiency. In describing the current fee structure at the time, the Governor's May Budget Revision stated that the Bureau's fund is "inherently unstable because it is based on the profitability of a nimble industry shaped heavily by external forces." The resulting Budget Act language required the Bureau to provide "a proposal for a new fee structure to support the Bureau's operations on an ongoing basis." Accordingly, to effectuate this proposal, the Bureau allocated a small portion of this augmentation to secure a vendor to support the required research and analysis of the Bureau's fee structure.

The Foundation for California Community Colleges (FoundationCCC)

The Bureau entered into an Interagency Agreement with FoundationCCC to explore these dynamics and consider potential revenue sources beyond the typical licensing-fee models previously proposed. Specifically, the Bureau requested FoundationCCC to: (1) explore further the dynamics of the private postsecondary education industry that challenge stable funding; (2) examine how the funding structures of other enforcement agencies impact their decision-making and effectiveness; and (3) develop options for the Bureau's revenue sufficiency.

The resulting FoundationCCC report (attached) includes several recommendations to generate sufficient revenue to cover Bureau expenditures. Importantly, while the options presented extend beyond fee increases, FoundationCCC did not identify alternative funding approaches sufficient to avoid fee increases entirely.

In brief, FoundationCCC's recommendations include:

- Identifying alternative funding sources for specified Bureau expenditures, to reduce the scale of the deficit to be covered by institution fees.

- Increasing licensing fees paid by institutions, in line with the Bureau and DCA's 2021 proposal.
- Exploring areas where additional revenues could be generated in tandem with reconsideration of existing Bureau authorities and mandates, to improve consumer protection.
- Considering alternative placements for the Bureau within California State government to best support its effectiveness.

Some of these recommendations extend beyond the scope of the Bureau's fee structure. The Bureau recognizes fully that addressing fiscal challenges often also requires addressing larger questions regarding administrative effectiveness and efficiency. The Bureau believes that some of the questions raised by FoundationCCC warrant further discussion and consideration with the Legislature, particularly those issues previously raised by the Bureau itself in its recent sunset reports. However, the Bureau also recognizes that the structural deficit requires immediate action.

As such, this memo includes the Bureau's recommendations for addressing the $11 million structural deficit, building from the options presented by FoundationCCC.

Bureau Recommendations

As outlined below, the Bureau recommends pursuing several FoundationCCC options, either as presented in the report or in a modified fashion.

The FoundationCCC report includes four options that the Bureau recommends pursuing as presented in the report, and further recommends pursuing them immediately for maximum, near-term impact to the Fund and to minimize impact on both institutions and consumer protection.

1. Use the Student Tuition Recovery Fund (STRF) to cover claim administration.
2. Use STRF to support the provision of transcripts to support related administrative costs.
3. Increase application fees.
4. Increase out-of-state institution fees.

1. Use the STRF to cover claim administration.

First, the Bureau believes that the report recommendation to draw resources from the STRF to cover workload associated with STRF claim administration aligns with the statutory purpose of STRF to relieve or mitigate economic loss suffered by students of private postsecondary institutions .[3] As noted by FoundationCCC, many agencies draw administrative costs from similar types of funds, and even the Bureau's predecessor agency, the Bureau for Private Postsecondary and Vocational Education, funded STRF administrative costs with STRF.[4] This recommendation would reduce the budget shortfall by an estimated $1.112 million annually.

2. Use the STRF to support the provision of transcripts to support related administrative costs.

Second, the Bureau believes that facilitating students' access to transcripts directly relieves or mitigates students' economic loss by helping to ensure they benefit from the education received, providing evidence of a credential to those who have completed and supporting transfer for those who have not. As such, assessing fees to support transcript requests would align with the purpose of STRF. Most entities that facilitate students' access to transcripts charge a fee for doing so, and some private college regulators in other states are able to use STRF-like funds to support their agencies' work facilitating students' access to records.[5] This recommendation would reduce the budget shortfall by an estimated $250,000 annually.

3. Increase application fees.

Third, the Bureau recommends the Legislature increase application fees effective January 1, 2025. The CAP review of Bureau application fees found that out-of-state application fees were grossly insufficient to cover their review and processing, rendering this an area of needed focus to ensure the Bureau is assessing fees sufficient to cover administrative costs. The modest adjustments to application fee levels proposed by the Bureau and DCA in 2021 would reduce the discrepancy and collectively raise a significant amount of revenue annually. For example, an application for approval to operate a non-accredited institution currently has a fee of $5,000, with estimated associated workload ranging between $12,500-14,000. The Bureau proposed a comparatively modest application fee increase to $7,500 for up to two programs. Collectively, increases to application fees are estimated to reduce the budget shortfall by $1.8 million annually.

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[3] Education Code section 94923.
[4] See 2008-09 Governor's Budget Display, State and Consumer Services, page 51. In 2008-09, $337,000 was appropriated from Fund 0960 (STRF) for the costs of STRF administration.
[5] For example, see Ohio Revised Code, Title 33, Chapter 3332, Section 3332.085: Mandatory payments into student tuition recovery fund – special assessment. Pursuant to this section, funds collected may be used "for the purposes of disseminating consumer information about private career schools and maintaining student records from closed schools."

4. Increase out-of-state institution fees.

Fourth, the Bureau finds the FoundationCCC recommendation to bring fees more closely in line to those of other states to have merit, particularly as the fee paid by these institutions was reduced, from $1,500 every two years to $1,500 every five years, at the same time required workload increased.[6] At a minimum, the Bureau recommends assessing a fee of $1,500 annually, which would reduce the budget shortfall by an estimated $120,000 annually.

The Bureau also recommends pursuing modified versions of the FoundationCCC options as described below.

5. Increase Bureau efficiency.
6. Draw resources from the STRF for the Office of Student Assistance and Relief
7. Increase annual fees to the level needed for fiscal solvency.

5. Increase Bureau efficiency.

While workload analyses were out of scope for the project, the report includes assertions that there may be room for greater efficiency in Bureau operations. For instance, FoundationCCC references areas in which the Bureau is not fully recovering amounts owed to it, including the lack of validation that the fee levels paid by institutions are correct (an area in which process improvements are already underway).

Improved efficiency and operations have been and continue to be a focus of the Bureau and there is room to go further. The Bureau estimates that it will be able to reduce the budget shortfall by an estimated $1 million through administrative efficiencies and process improvements.

6. Draw resources from the STRF for the Office of Student Assistance and Relief

The FoundationCCC report recommends using General Fund rather than licensee fees to fund the Office of Student Assistance and Relief (OSAR). The Bureau does not endorse this recommendation. Instead of General Fund, the Bureau recommends using STRF to cover these functions.

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[6] Specifically, effective July 1, 2022, the Bureau must now receive and process notifications from registered institutions in addition to the registration application. In addition to Bureau staff workload, these reviews entail additional costs of mandated consultation with the Attorney General and any enforcement costs that may result from the Bureau revoking or placing conditions on a registration if the institution poses risks to California consumers. See Education Code section 94801.5.

Education Code section 94949.73 specifies that OSAR shall prioritize the provision of "individualized assistance to students to relieve or mitigate the economic and educational opportunity loss" associated with institutional closures or unlawful activities, including one-on-one support in applying for and securing financial relief. Similarly, the statutory description of STRF (Education Code section 94923) is that it "relieves or mitigates economic loss suffered by a student…." demonstrating clear mission alignment between these units.

Further, the support provided by OSAR – through the office's outreach efforts and work with individual students to maximize access to both federal and state financial relief – is what enables the purpose of STRF to be achieved. The Bureau believes that the clear alignment between OSAR duties furthers the purpose of STRF and necessitates OSAR administrative cost recovery to be supported by the fund. This recommendation would reduce the Fund shortfall by $1.350 million annually.

7. Increase annual fees to the level needed for fiscal solvency.

Collectively, the six recommendations above (further outlined in Table 3 below) would reduce the deficit by $5.6 million annually. However, future annual deficits would still exist and must be solved for, beginning with approximately $1.65 million in the Budget Year (not accounting for the expected $4 million General Fund) and growing to a deficit of $3.7 million to $5.4 million in Budget Year 2028-29.

The Bureau recommends adopting the FoundationCCC proposal to raise institutions' annual fees in a manner similar to the 2021 Bureau proposal, though to a lesser extent given the reduced need for additional revenue. The proposal may be pursued and scaled in several ways, depending on which of the recommendations above are adopted and in what timeframe.

The 2021 proposal would have modified institutions' annual fees through several mechanisms:

- Establishment of a "base fee" of $3,500 that each approved institution would pay annually to cover minimal costs of oversight. This fee does not currently exist.
- A revenue-based fee, assessed as 0.775% of institutional revenue derived from California students (an increase from the current 0.55% of revenue). This fee is subject to the following limitations:
  - A minimum fee of $1,000 (a reduction from the current $2,500).
  - A maximum fee of $80,000 per assessed location (an increase from the current $60,000), and $750,000 per institution (same as current).

Table 2 below compares the status quo and 2021 proposal with two alternative options, designed to illustrate how the approach may be pursued in different ways to generate needed levels of revenue. The Bureau and DCA are prepared to work with the Legislature to refine an approach that ensures fiscal stability and balances stakeholder needs.[7]

Table 2. Annual Fee Structure, Current, Proposed, and Alternative Options

	Current	2021 Proposal	Alternative 1	Alternative 2
Base Fee	N/A	$3,500	$3,500	$3,500
Revenue Percentage	0.55%	0.775%	0.625%	0.575%
Minimum Fee	$2,500	$1,000	$1,000	$1,000
Maximum Fee	$60,000	$80,000	$60,000	$80,000
Institution Total	$750,000	$750,000	$750,000	$500,000
Projected Change	N/A	$7.9 million	$4.5 million	$4.6 million

The Bureau's full list of recommendations and the fiscal implications are outlined in Table 3.

Table 3. Recommendations to Improve Fiscal Solvency

Recommendation	Annual Impact	Effective Date
Improved Operations	$1 million	July 1, 2024
Fund STRF Administration through STRF	$1.112 million	July 1, 2024
Assess Student Transcript Fee to STRF	$250,000	July 1, 2024
Fund OSAR through STRF	$1.35 million	July 1, 2024
Increase Application Fees	$1.8 million	January 1, 2025
Increase Out-of-State Registration Fee	$120,000	January 1, 2025
Increase Annual Fees	TBD	TBD

The State of the Student Tuition Recovery Fund

Pursuant to Education Code section 94923, "the Student Tuition Recovery Fund 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."

STRF works like an insurance program in which enrolled students pay small amounts or "assessments" into the fund, from which harmed students may later apply for relief if they experience economic loss. The amounts students pay is

[7] The alternative proposals presented in Table 3 are calculated based on the 2021 model previously developed. However, DCA and the Bureau anticipate similar outcomes based on internal analyses of annual fee revenues collected in the most recent fiscal year.

determined by the Bureau and is adjusted periodically so that the STRF balance remains within allowable thresholds. Per Education Code section 94925, the STRF balance is intended to remain between $20-25 million. In Budget Year 2022-23, the assessment was set at $2.50 per $1,000 in institutional charges and the Bureau collected $11.9 million in STRF assessments. However, the STRF balance is currently $29 million.[8] As such, the assessment for students will be eliminated effective April 1, 2024, until the balance gets below $20 million. Historical revenue, expenditure, and fund balance information is in Table 4.

Table 4: Fund Condition, Student Tuition Recovery Fund

0960 - Student Tuition Recovery Fund
Analysis of Fund Condition
(Dollars in Thousands)
2024-25 Governor's Budget

Prepared 1.10.2024

	Actual 2015-16	Actual 2016-17	Actual 2017-18	Actual 2018-19	Actual 2019-20	Actual 2020-21	Actual 2021-22	Actual 2022-23	CY 2023-24	BY 2024-25	BY +1 2025-26
BEGINNING BALANCE	$ 29,606	$ 28,490	$ 27,268	$ 25,359	$ 25,243	$ 21,731	$ 15,830	$ 16,545	$ 24,998	$ 19,058	$ 13,118
Prior Year Adjustment	$ 14	$ 1	$ 0	$ 1,046	$ -1	$ 54	$ -	$ -4	$ -	$ -	$ -
Adjusted Beginning Balance	$ 29,620	$ 28,491	$ 27,268	$ 26,405	$ 25,242	$ 21,785	$ 15,830	$ 16,541	$ 24,998	$ 19,058	$ 13,118
Total Revenues	$ 182	$ 350	$ 91	$ 555	$ 562	$ 303	$ 2,332	$ 12,110	$ 60	$ 60	$ 107
TOTAL RESOURCES	$ 29,802	$ 28,841	$ 27,359	$ 26,960	$ 25,804	$ 22,088	$ 18,162	$ 28,651	$ 25,058	$ 19,118	$ 13,225
Total Expenditures	$ 1,312	$ 1,573	$ 2,000	$ 1,717	$ 4,073	$ 6,258	$ 1,617	$ 3,653	$ 6,000	$ 6,000	$ 6,000
FUND BALANCE	$ 28,490	$ 27,268	$ 25,359	$ 25,243	$ 21,731	$ 15,830	$ 16,545	$ 24,998	$ 19,058	$ 13,118	$ 7,225
Months in Reserve	**217.3**	**163.6**	**177.2**	**74.4**	**41.7**	**117.5**	**54.3**	**50.0**	**38.1**	**26.2**	**14.5**

NOTES:
1. Assumes workload and revenue projections are realized in BY and ongoing.
2. STRF is a continously appropriated fund.

The primary concern regarding the STRF balance must be ensuring that it retain sufficient funds to support harmed students as needed. Determining how much is needed to ensure sufficient funding is difficult to say, because large-scale closures are typically unforeseen and unanticipated. However, the Bureau does not believe that the proposals to fund up to $2.712 million in student support services from STRF would jeopardize students' access to timely relief, even in the case of a large closure, for two reasons.

First, large numbers of claims take time to adjudicate. Bureau staff work with applicants to ensure applications are complete and as strong as possible, and then STRF administrative staff generally process them in the order received. Should a very large impact closure occur, this time would allow the Bureau to use its regulatory authority to increase STRF assessments to begin bringing in additional revenue sufficient to cover the expected need. Second, some of the most substantial California closures in recent history, including Corinthian Colleges and ITT Technical Institute, represented surprisingly small total claim values (under $2 million each). This is because large institutions generally receive

[8] While the Bureau begins the process to eliminate assessments when the Fund balance reaches $25 million, the balance may temporarily exceed $25 million as the change in assessment rates takes place and deposits continue to come in.

federal aid from the U.S. Department of Education, and OSAR and STRF staff work to maximize students' total eligibility for relief by prioritizing federal relief applications before STRF.

Conclusion
Thank you for your support of the Bureau in its mission to protect prospective, current, and former students of private postsecondary educational institutions in California. While the Bureau's budget shortfall has been long in the making, we are optimistic about the future. Specifically, the Bureau believes the recommendations provided would establish a budget framework that balances the need to ensure regulated entities bear the costs of their regulation while also improving efficiency in operations. All told, I firmly believe that the options presented would provide financial solvency for the Bureau now and in the years to come while having a lower financial impact to institutions than previously anticipated.

Please feel free to contact me at (916) 574-8900 or Deborah.Cochrane@dca.ca.gov if you have any questions.

Sincerely,

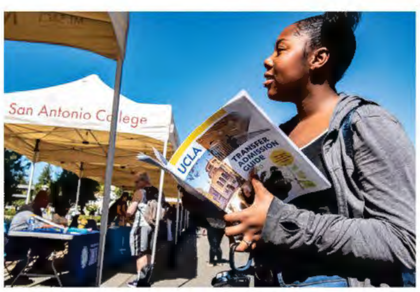
Deborah Cochrane
Bureau Chief

cc: Gabriel Petek, Legislative Analyst, Legislative Analyst's Office
Joe Stephenshaw, Director, Department of Finance
Nichole Muñoz-Murillo, Deputy Legislative Affairs Secretary, Office of the Governor

Prepared for California's Department of Consumer Affairs

Bureau for Private Postsecondary Education Funding Study

January 24, 2024



FOUNDATION *for* CALIFORNIA COMMUNITY COLLEGES

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Table of Contents

I. Introduction

This report fulfills the directive of provisional language contained in the 2022 Budget Act, which requires the Bureau for Private Postsecondary Education (BPPE or Bureau) to provide the Legislature with a proposal for a new fee structure to support the Bureau's ongoing operations and close its revenue shortfall. By Budget Year 2028-29, at current revenue levels and with projected routine growth in outlays, the revenue shortfall is projected to be up to $11 million. Unlike prior BPPE fee studies, this report approaches the revenue questions with a broader policy lens by discussing the constantly changing dynamics of the private postsecondary education industry and discussing additional reforms that could change the undergirding of BPPE's fiscal solvency.

Following the 2022-23 May Budget Revision, the Legislature approved a $24 million General Fund appropriation, allocated over three fiscal years, to stabilize BPPE. This funding has allowed BPPE to pay back the Bureau of Automotive Repair for an outstanding loan while also providing policymakers with the time needed to determine how best to align BPPE's mission with its revenues and the needs of Californians. The allocations of the state General Fund appropriation are contingent upon this report being provided to the Legislature.[1]

1 Budget Item 1111-011-0001, Provision 2, Budget Act of 2022 (AB 178, Chapter 45, Statues of 2022)

As part of the aforementioned 2022-23 May Revision, the Administration noted that “a consistent and reliable approach to regulatory oversight of private for-profit institutions must be supported with stable funding. However, the Bureau’s fee model is inherently unstable because it is based on the profitability of a nimble industry shaped heavily by external forces.”[2] This report supports that assertion and finds that much of the Bureau’s fiscal instability stems from a misalignment between its statutory mission, the revenues it brings in from fees to support that mission, and the expectations of policymakers and stakeholders that exceed the amount BPPE is funded. When taken as a whole, these factors render it impossible to uncouple the Bureau’s current fiscal sustainability challenges from its mission.

This report explores options for increasing annual revenues so that BPPE’s operating costs are sufficiently and sustainably covered. After numerous meetings, research, and interviews with experts and enforcement leaders in other California agencies, many recommendations and options to consider emerged. The proposed recommendations and options range from small revisions that should be enacted under BPPE’s current statutory authority (such as verifying institutional income) to large scale reforms (such as creating a new state Department). The intent of this report was not to provide a single answer that would resolve the funding challenges that face BPPE. Instead, it lays out a set of recommendations and other options for consideration that contribute to a holistic solution.

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2 May Revision, 2022-23, p. 40

The majority of the recommendations within the report are currently quantifiable and are monetized in Appendix A. The report also offers options for consideration that range from charging graduates of licensed programs a nominal fee (currently quantifiable) to bigger reforms, such as nesting BPPE in a new state Department, which will require further exploration. A combination of these recommendations and options will solve the existing structural deficit, with some recommendations being more fiscally or politically viable in the current environment. Regardless of the recommendations and options chosen, it is crucial that the Bureau be solvent to ensure the protection of California consumers.

Below is a summary table of recommendations and options for consideration that will be outlined in the report:

Table of Recommendations and Options for Consideration

Increase Resources Through Fees

Adjust Annual Fees[$*]

Increase Application and Substantive Change Fees[$*]

Apply an Automatic Inflator for Application Fees[$*]

Assess Fees using a Pro Rata Fee Assessment[i]

Require Use of Surety Bonds and School Risk Profile[*]

Expand Cost Recovery Authority[$*]

Update Nonprofit Schools contracted fees[$*]

Expand Authority and Align Fees with Workload for Approving Out-of-State Schools[$*]

Expand Funding Sources for Bureau Operations

Use State General Fund for Small Subset of BPPE Operations:

- AG enforcement costs[$*]
- OSAR[$*]

Expand use of Student Tuition and Recovery Fund (STRF)

- Use STRF revenue to fund STRF personnel[$*]
- Assess $25 per Student Transcript Fee to be paid by the STRF[$*]

Potential Efficiencies and Revenue Enhancements

Operational Efficiencies:

- Verify Self-Report School Revenue[*]
- Improve Fine and Penalty Assessment and Collection[*]
- Increase Recovery of Costs[*]
- Define and Enforce Key Terms*

Consider additional payers:

- Charge Graduates Fee for Licenses[$*]

Big Picture Reforms

Move BPPE out of DCA and into Business, Consumer Services and Housing Agency

[i] Move BPPE into a Newly Created Higher Education Agency[i]

[*] *Indicates a recommendation by FoundationCCC.*
[i] *Indicates an option for consideration.*
[$] *Indicates a quantifiable recommendation. For details, please refer to Appendix.*

II. Methodology

> ***"FoundationCCC partnered with the Department of Consumer Affairs (DCA) and BPPE to find alternative approaches for funding the Bureau that protects students in California...FoundationCCC employed a multi-pronged approach, including discovery, background research, and data gathering and analysis."***

This report has been produced by the Foundation for California Community Colleges (FoundationCCC) through an Interagency Agreement with the Department of Consumer Affairs. FoundationCCC, a 501(c)(3) organization, has been the official auxiliary to the California Community Colleges Chancellor's Office and Board of Governors since 1998. FoundationCCC is a trusted partner of state agencies to understand and examine the intersegmental crossroads that will impact California's higher education system.

Authorized in state statute, FoundationCCC operates over 50 innovative programs and services that benefit students, colleges, and communities across six priority areas of impact: student success, workforce development, equity, community impact, climate action, and system support. Given that California's private postsecondary education industry exists at the intersection of each of their priority areas of impact, FoundationCCC partnered with the Department of Consumer Affairs (DCA) and BPPE to find alternative approaches for funding the Bureau that protects students in California.

To generate the options included in this report, FoundationCCC employed a multi-pronged approach, including discovery, background research, and data gathering and analysis. FoundationCCC first met with budget staff at the Department of Consumer Affairs and the Bureau for Private Postsecondary Education, including BPPE's Bureau Chief. Through these meetings, FoundationCCC gained an in-depth understanding of the Bureau's fiscal forecast, the challenges created by the private postsecondary education marketplace and the current organizational structure, and historical efforts to create efficiencies and improve the Bureau's efficacy. Over 13 weeks FoundationCCC met regularly with DCA and BPPE to assess the existing structure and learn what options have been explored in the past.

Through these discovery meetings, DCA and BPPE recommended other governmental regulatory agencies for FoundationCCC to research. FoundationCCC examined those agencies and additionally reviewed other regulatory agencies from various industries to understand the different funding models. After compiling data and resources, FoundationCCC identified overarching themes and potential funding models that could be applied to BPPE's existing structure. Sample industries and/or agencies included, hospitals and banks (the Department of Financial Protection and Innovation), the Bureau of Gambling Control, the California Attorney General's Consumer Protection Division, and K14 Education's Fiscal Crisis and Management Assistance Team (FCMAT).

Collectively, DCA, BPPE, and FoundationCCC identified about a dozen key stakeholders to interview with specific knowledge and expertise. FoundationCCC conducted eleven stakeholder interviews with industry representatives, consumer advocates, legislative staff, and government agency officials, several of whom have expertise in, or lead, enforcement efforts in other California agencies. The interviewees were generally high-level employees that agreed to talk with us on the condition of anonymity because they weren't specifically authorized to speak on behalf of their organizations. They all offered insightful perspectives, observations, and recommendations for how BPPE can and should align its mission with sufficient revenues to meet the needs of Californians.

The group then decided upon criteria by which FoundationCCC would measure potential recommendations for consideration in this report. The criteria were: (1) sufficiency, (2) sustainability, (3) political feasibility (based on BPPE's historical attempts and state government's perceived appetite for change), and (4) the extent to which the option would protect California's consumers.

FoundationCCC identified common themes that emerged through these meetings, interviews, and background research. Interviewees commented on the challenges faced by the Bureau, in some cases suggesting alternative approaches. In other cases, the FoundationCCC team, from its higher-level vantage point, connected the themes with potential funding solutions to form a set of draft recommendations. These recommendations were then measured against the agreed-upon criteria and used to compose a series of steps BPPE can take to move forward. To provide deeper context and analysis, this report includes various options beyond those recommended; these options are meant to broaden the array of avenues forward and expand the set of potential solutions.

III. BPPE Has a High-Stakes Role

"[C]onsumers can be subject to a lifetime of crippling student loan debt if colleges don't deliver on their promises of job training and career advancement…BPPE's most important duty is to provide student consumers with a level of confidence that the colleges in which they enroll are legitimate and capable of providing the training and education they seek."

The ability of BPPE to fulfill its mission and meet the expectations of stakeholders hinges on adequate resources and funding. The stakes are high: consumers can be subject to a lifetime of crippling student loan debt if colleges don't deliver on their promises of job training and career advancement. BPPE approval is also a critical gateway through which institutions become eligible for state and federal dollars.

BPPE was formed under the *California Private Postsecondary Act of 2009*[3] to provide oversight and regulation of California's private postsecondary schools. This includes setting minimum educational quality standards for students attending private postsecondary institutions in California and protecting and promoting the interests of California students and consumers.

3 Senate Bill 48 (Chapter 310, Statutes of 2009).

BPPE's most important duty is to provide student consumers with a level of confidence that the colleges in which they enroll are legitimate and capable of providing the training and education they seek. When schools don't fulfill these promises, BPPE offers recourse for California students who are harmed.

Many of the schools under BPPE's purview rely heavily on students obtaining loans to pay for their tuition and educational costs. Relatively unfettered access to student debt poses one of the greatest risks to California's student consumers. Unlike other types of debt, such as mortgage debt, auto loans, and credit cards, student loans are difficult to discharge in bankruptcy and therefore often follow an individual throughout their lives. While easy access to loan dollars can provide a student access and help them complete their education, when the degree does not have value in the workforce, a student can become saddled with debt without job prospects to pay it off.

Approval by BPPE also opens doors for schools to receive state and federal funding. For example, low-income students attending BPPE-approved schools may be eligible for state Cal Grant funding to pay tuition costs and/or provide students with living stipends. Once approved by BPPE, schools can become eligible for a litany of Federal Title 38 Workforce Innovation and Opportunity Act (WIOA) funds (including inclusion on the California's Eligible Training Provider List). Bureau approval also affords colleges access to dollars available through California's Department of Rehabilitation programs.

A BPPE-like body is mandatory for institutions operating within California. Since the Higher Education Act was first enacted, federal law has required that an institution be authorized by each state in which it offers education and be subject to a meaningful complaint procedure. This authorization occurs as part of the federal government's higher education *triad*, where the federal government retains responsibility for administering federal student aid, accrediting agencies bear the responsibility for ensuring academic quality, and states are responsible for consumer protection. For unaccredited schools, the BPPE serves both these latter roles.

Other states have assigned this role to an existing Higher Education Agency (which California does not have) or they have created state licensure agencies to authorize the various sectors of higher education and handle complaint processes. For California, BPPE has been the agency that authorizes unaccredited private institutions. Beginning in 2016, BPPE handles complaints for about 100 nonprofit accredited institutions as well. This function is known as *State Authorization*.

BPPE's charge to protect California consumers remains its predominant function. It is this very role that has placed it at the epicenter of a range of other critical government activities. For example, the Bureau serves as the de facto first line of defense against diploma mills and so-called "educational institutions" that appear to exist primarily to facilitate access to student and other types of immigration visas. BPPE also has a unique vantage point in identifying issues like insurance or voucher fraud, or human trafficking operations in private postsecondary institutions. While not core elements of BPPE's mission, these and similar functions highlight the role that BPPE plays across a range of state and federal regulatory ecosystems, given the industry that it oversees. For all these reasons and more, California wants and needs an effective private postsecondary education regulator.

IV. Changing Nature of the Private Postsecondary Education Marketplace

"Colleges are increasingly owned by corporations that merge, buy and sell schools, convert from profit to not-for-profit, and move out-of-state, all while continuing to enroll Californians ... Additionally, schools' access to federal student aid dollars, and more importantly, students' access to student loans, have become drivers of the federal government's accountability and student protection policies."

When the current version of the Bureau was created in 2009, policymakers were trying to solve for the emerging problem of the time: The proliferation of a new type of school in the marketplace, mainly large publicly traded for-profit institutions offering academic and vocational degrees. Previously, the state's regulatory role had been focused primarily on smaller vocational and trade schools (e.g., barbering and cosmetology; truck driving, medical assisting) because this new spate of schools had yet to exist at the scale they do now.

While the basic framework for the Bureau has remained largely unchanged, the industry it regulates is constantly changing. Perhaps with the exception of financial institutions, no other regulated industry has changed as much and as fast as private postsecondary education. The presumption in 2009 was, if California could put in place an approval process for schools to operate in the state, that process would be enough to provide students with the protections they need and deserve. While the current framework put some enforcement provisions in place, that does not appear to have been policymaker's primary focus.

Colleges are increasingly owned by corporations that merge, buy and sell schools, convert from profit to not-for-profit, and move out-of-state, all while continuing to enroll Californians. The state has seen an influx of out-of-state colleges operating online-only education programs for students within its borders, something that could not have been foreseen in 2009. Additionally, schools' access to federal student aid dollars, and more importantly, students' access to student loans, have become drivers of the federal government's accountability and student protection policies.

Federal rules governing colleges wax and wane with the partisan nature of the Presidency. Rules adopted under the Obama Administration were almost immediately repealed when former President Trump came into office, though some of those rules have been recently reenacted under the Biden Administration. The impermanence of federal rules, along with the under-resourced enforcement of state law, have been key drivers in the decision-making of private postsecondary institutions as they adjust their legal structures to comply with the newest federal regulations to remain or become eligible for federal student aid.

Given the high-stakes role of BPPE and the constantly fluctuating industry, California needs a Bureau that is adequately resourced and proactive, with both knowledge of the industry and the use of its statutory authority, to ensure a well-regulated educational sector.

V. Increasing Resources Through Fees

"California students want and need a fiscally solvent BPPE to perform its oversight role, yet BPPE's resources and current fee structure are not properly aligned with what it needs to fulfill its mission."

As a Bureau under DCA, BPPE relies solely on fees paid by schools (with the exception of the recent, time-limited infusion of General Fund). This model has become unsustainable. In particular, BPPE's fees: (1) were set in statute in 2016 and last adjusted in 2018;[4] (2) must be adjusted statutorily by the Legislature; (3) are assessed on a constantly changing industry that expands and contracts in unexpected ways that make it difficult to predict, much less rely on, fee revenue; and (4) are insufficient to cover either BPPE's actual ongoing costs or the unexpected costs for activities related to enforcement, litigation and school closures, among others.

In addition to providing insufficient revenue, the current fee structure does not account for the complicated postsecondary marketplace. When colleges change their legal structures and/or move out-of-state while continuing to enroll Californians, fewer schools end up paying BPPE's annual fees. Unauthorized activities, ranging from unapproved schools enrolling Californians to outright fraud, continue, and BPPE's limited resources significantly impair its ability to sufficiently enforce California law. California students want and need a fiscally

4 Senate Bill 1192 (Chapter 593, Statutes of 2016)

solvent BPPE to perform its oversight role, yet BPPE's resources and current fee structure are not properly aligned with what it needs to fulfill its mission.

Overwhelmingly, interviewees expressed that the fees are too low. Some interviewees opined that the current structure is such that BPPE actually has a fiscal disincentive to shutter schools operating illegally, because it would result in decreased revenue. While school and industry interviewees acknowledged that fees and fines are not the deciding factor for doing business in California, they also bemoaned that the “cost of doing business in California” is simply too high.

After analyzing prior fee proposals and synthesizing interviewee feedback, FoundationCCC suggests a variety of fee-related changes to better align revenues with BPPE’s current functions. Each recommendation would, to some degree, help close BPPE’s operating deficit and, when taken in combination with other recommendations and options for consideration in this report, could solve the Bureau’s fiscal insolvency. These recommendations and options are presented below.

Annual, Application, and Change Fees

BPPE charges fees for a variety of different college actions and approvals. First and foremost is the Annual Fee paid yearly by all approved institutions. Generally, the Annual Fee is a percentage (0.55 percent) of the campus revenue derived from California students; the minimum fee is $2,500 and it is capped at $60,000.[5] The amount generated by this fee accounts for the vast majority of the Bureau’s annual revenues (between 86 and 89 percent for the last three years).

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5 Education Code, section 94930.5(g).

This fee, along with most other Bureau fees, is set in statute. The current fee level was established in 2016, went into effect in 2018, and has remained stagnant for the past five years despite increased operating costs that are out of the Bureau's control (e.g., state employee salaries, benefits, and operational costs, among others).

In 2021, BPPE produced a fee increase proposal[6] that primarily addressed its Annual Fee; it was not acted on by the Legislature. This proposal was designed to meet the structural fund imbalance forecasted at the time and was estimated to result in an additional $7.9 million in annual revenue. Specifically, the proposal included:

- The assessment of a new Base Fee of $3,500 per year per institution
- An increase of the Annual Fee to 0.775 percent (from 0.55 percent)
- An increase of the maximum fee to $80,000 (from $60,000)
- A decrease of the minimum fee to $1,000 (from $2,500, to partially offset the costs from the new base fee)

FoundationCCC believes that this proposal balances the financial needs of both BPPE and the institutions it regulates, while providing an equitable fee structure across small and large educational institutions. The assessment of a new Base Fee is intended to ensure that smaller schools are better covering the costs of basic oversight, while the increase to the revenue-based Annual Fee ensures that larger institutions are covering a proportionately larger portion of the oversight for the industry.

6 BPPE Advisory Committee Meeting Agenda, Thursday, August 26, 2021

It is worth noting that the 2021 proposal did not recommend assessing an Annual Fee on out-of-state schools that enroll California students. (As discussed elsewhere in this report, these institutions are not charged the Annual Fee.) At the time, new state policy had yet to be implemented and changing out-of-state school fees was deemed premature. Changes to these fees are now called for and would better address the associated workload.

In addition to the Annual Fee, BPPE charges institutions for applications that require review and approval. For instance, if substantive details about an institution change (e.g., ownership, location, or means of instruction) BPPE currently charges a modest fee of $250 for reviewing and processing the change. This compares with an estimated cost of $1,121 (in 2021) for BPPE to conduct the work associated with the change. BPPE's 2021 proposal included recommendations to increase these transactional fees and make up some of the fiscal imbalance, while not burdening institutions with the full cost of each change (e.g. rather than increasing the above noted $250 fee to the full $1,121, the proposed increase was to $500). Again, this balances BPPE's need to cover operational costs, without overburdening the educational institutions.

Cumulatively, these application fee increases (15 in total) were estimated to raise BPPE's revenue by $1.8M annually. Combined with the estimated $7.9M in revenue that would result from changes to the Annual Fee, the proposal was estimated to generate an additional $9.7M in revenue annually.

FoundationCCC finds that the 2021 proposal remains reasonable. If the Legislature and Administration wish to increase revenue to the Bureau through fees, this proposal should be revisited. Modest changes could be made to adjust for the current context, making the proposal fit within the Bureau's updated financial outlook and coupled with other recommendations from this report, could resolve the structural imbalance.

Automatic Inflator

Another way to increase fee revenue is to amend the Education Code to include an automatic inflator on a subset of statutorily set fees. Inflators such as the California Consumer Price Index (CCPI) are oftentimes used under these types of circumstances. Since the Annual Fees are assessed based on the proportion of income derived from California students, there is an argument to be made that the Annual Fee is already adjusted based on increased costs (as schools would be increasing their tuition costs to cover their institutional costs), which suggests that this option should first be explored for Application-Specific Fees. An inflator would prove particularly useful for the minimum and maximum amounts, which remain static. Prior legislation[7] would have allowed all DCA Boards, Commissions, and Bureaus, including but not specific to BPPE, to increase fees every four years at a rate not to exceed CCPI. This measure failed passage in the Senate.

7 Assembly Bill 613 (Low), as introduced in 2019.

Pro Rata Fee Assessment

Another alternative is to allow BPPE to levy its annual fees using an entirely different methodology. In addition to having fees set in statute, the Legislature could also authorize BPPE to charge a pro-rata assessment to make up any shortfalls. This is similar to a model used by the Department of Financial Protection and Innovation where licensees cover the costs of administering the program. Under this scenario, BPPE would use a pro-rata assessment, meaning it would first determine its operational costs and then prorate that amount out to all school payers. First, BPPE would conduct an internal review to gauge the efficiency of its operations. It would then create a weighted methodology that considers the financial resources of each school to ensure that schools pay what they can objectively afford. While this option could fully solve the Bureau's fiscal insolvency, the annual fees paid by schools would increase substantially and rise and fall depending on the number of payers and the financial resources of those payers.

School Closures and Potential Use of Surety Bonds

In the past several years, the precipitous closure of several large private postsecondary institutions has resulted in direct and devastating harm to thousands of students. When a school closes, BPPE is responsible for a critical, yet not specifically funded, set of activities.

While the Student Tuition Recovery Fund (STRF) exists to mitigate the economic losses suffered by impacted students, there is no corresponding fund to cover the Bureau's administrative costs related to the closure, (e.g., investigation costs; alerting harmed students of their options and remedies; and any enforcement costs, including legal actions). Given that the timing of these closures is unpredictable, staffing the associated administrative work is challenging, as maintaining a unit solely dedicated to closures might have periods of time with no workload.

When a school closes, there is a fundamental regulatory question that must be answered: Who should bear the costs? Is it the entire regulated industry as a proportion of their regulatory fees, or the school that closed? If it is the latter, how does the Bureau extract those resources from a business that is no longer operating?

Currently, STRF adopts the approach that the entire regulated industry shares a portion of the costs for the students directly harmed (though in reality it is the students enrolled at each regulated school that are paying into STRF). If the policy preference is to have the closing school pay all, or a greater share, of the financial harm caused by its closure, one option would be to require schools to procure a Surety Bond at the time the school is approved by the Bureau to operate.

A Surety Bond is a guarantee by one party (the fiscal underwriter) to assume responsibility for the debt obligation of a borrower (the school) if that borrower fails to perform or meet its responsibilities. California could consider requiring BPPE schools to secure bonds to cover specified BPPE costs. In the case of a closure, the bond would ensure that the school could cover the specified costs associated with its closure. The use of bonds is not uncommon for private postsecondary colleges regulated in other states, nor is it uncommon for other types of regulated businesses operating in California. For example, a building contractor regulated under the Contractors State License Board must hold a bond as part of the licensing process.

Linking Surety Bond to School Risk Profile

Industry representatives interviewed suggested that the Bureau be allowed to create and use a “risk management” metric that could link to a new surety bond requirement, whereby the bond amount would be commensurate with the risk a school would pose. The size range of the surety bond would be an acknowledgement of the potential cost to BPPE of a closure. On the surface, this could make sense for California. The downside is that the “high risk” schools would likely be California’s small vocational and trade schools that make up the bulk of institutions in the industry (such as cosmetology and massage schools) rather than the large corporate conglomerates that have a variety of financial machinations and bankruptcy tools at their disposal.

Expand Cost Recovery Authority to Cover Site Visit Expenses

Under the Business and Professions Code (BPC 125.3), the Bureau can recover workload costs from schools when those costs are specifically related to a disciplinary action. Using this same premise, policymakers should consider explicitly requiring institutions to pay the direct costs associated with other activities, primarily travel costs associated with site visit evaluations for both approval and compliance. These costs constitute between $100,000 and $200,000 of BPPE’s costs annually and should be covered by the licensee.

Nonprofit Schools Authorized by BPPE

Under the federal State Authorization law, California must maintain a state-level entity to receive and act upon complaints about a private institution. Public colleges and universities are de facto authorized by the very nature of them being public; private colleges that are already under the Bureau’s purview are also de facto authorized by way of BPPE approval, however, colleges that are “exempt” from Bureau oversight have no natural State Authorizing entity. These institutions are exempt from BPPE oversight because California law has opted to accept regional accreditation by Western Association of Schools, Colleges, and Universities (WASCU) as the arbiter of both academic quality and the institution's fiscal integrity.

When it came time for California to officially authorize these institutions, and in the absence of a California Higher Education Agency, BPPE was tasked with receiving and investigating complaints about any such institution that sought to contract with BPPE for complaint-handling. Doing this enabled the institutions to comply with federal rules and remain eligible for federal financial aid. In exchange, each exempt nonprofit college pays the Bureau a flat amount of $1,076 annually, as established in statute, for it to process student complaints. This amount has remained flat since it was established in 2015[8]. While BPPE appears to have authority to raise the fee, it has not done so. The Bureau should explore increasing this fee to adjust for annual increased costs.

Out-of-State Schools: Expand Authority and Align Fees with Workload

A key place where the workload of the Bureau is out of alignment with the fee structure is the approval of out-of-state institutions operating online education programs in California. These institutions are charged an extremely nominal fee of $1,500, which previously was assessed every 2 years but now covers 5 years (effectively making the rate $300 per year).[9] This fee level is entirely insufficient to cover the costs of the Bureau to authorize these schools and is out of sync

8 Education Code section 94874.9(e)(1)(D).

9 California Education Code section 94930.5(e)(1) specifies an out-of-state institution registration fee as $1,500. Section 94801.5(a) outlines that this fee is payable upon registration (application). Prior to July 1, 2022, Education Code section 94801.5(d) stated that a registration was valid for two years; beginning July 1, 2022, Education Code section 94801.5(d) states that a registration is valid for five years.

with what other comparable states charge.[10] For example, institutions who operate outside of NC-SARA,[11] as all California institutions do, are charged an average of $3,621 for initial authorization, and an average of $2,775 for annual renewal. Below are three options for better aligning fees with costs for out-of-state schools.

First, given that California's annual fee of $300 is comparatively minimal, out-of-state institution fees should immediately be increased to at least $1,500 per year rather than every five years. Assuming the same number of registered schools as today (about 100), this would increase annual revenue from roughly $30,000 to $150,000.

A second option would be to align both the initial authorization and annual Out-of-State school fees with non-NC-SARA fees. If BPPE charged the average initial authorization fee ($3,621 per school) and average annual fee ($2,775 per school) that non-NC-SARA schools pay, the Bureau would see an increase of over $639,628 in annual revenue.

BPPE should also be granted additional authority to engage with Out-of-State schools. For example, BPPE currently has very little authority to monitor or follow up with schools, whether that be to assess citations or penalties for problematic school activities at registered institutions, or to pursue actions against unregistered online institutions enrolling California students. Lack of

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10 2021 NC SARA Cost Savings Technical Report which indicates that many states charge much higher fees for schools that offer "distance learning." [pdf]

11 NC-SARA is a state-by-state reciprocity agreement whereby one state recognizes and accepts the regulatory structure of the other state. California does not participate in NC-SARA.

authority in this area is a significant limitation to BPPE's ability to enforce California law.

Given BPPE's minimal authority to regulate of Out-of-State schools, there is a significant incentive for big Out-of-State schools with large online offerings to shutter brick-and-mortar facilities in California and move to entirely online programming. Additionally, there are currently an unknown number of Out-of-State schools that are not authorized to operate in California but are doing so anyway. While BPPE has authority to issue citations to in-state institutions operating without approval, with associated fines of up to $100,000, no similar authority exists for Out-of-State institutions that have failed to register with the Bureau.

BPPE should be resourced to actively pursue un-registered institutions doing business in California in order to bring schools into compliance and hold them accountable for non-compliance. Doing so will increase oversight of a burgeoning practice and industry while also increasing the number of fee-paying institutions. This leads to a third option, which is for the Bureau to charge Out-of-State schools an amount equivalent to what it costs BPPE to approve and regulate them. The Bureau would determine those costs and then construct an allocation methodology, whether it be per student, per California revenues earned, or some other metric. (It is worth noting that BPPE workload would increase under this option.) Without knowing the operating revenues or enrollments of the affected schools, the impact of this latter fee model cannot be estimated, but it is safe to assume that the impact on BPPE revenue would be substantial.

VI. Expanding the Funding Sources for Bureau Operations

"BPPE's fiscal insolvency is unlikely to be solved long-term through the existing fee levels and structure alone. This leads to the exploration of other funding sources to supplement or in some cases supplant portions of the existing Bureau funding, thereby freeing up resources for unfunded activities."

Interviewees, as well as DCA and Bureau staff, agreed that BPPE's fiscal insolvency is unlikely to be solved long-term through the existing fee levels and structure alone. This leads to the exploration of other funding sources to supplement or in some cases supplant portions of the existing Bureau funding, thereby freeing up resources for unfunded activities. Given California's role in the federal regulatory *Triad*, there is a case to be made for the use of state General Fund, reflecting California's role in, as well as use of the Student Tuition Recovery Fund (STRF). These options are discussed below.

Use State General Fund for Small Subset of BPPE Operations

While the General Fund is rarely used to support the operations of consumer protection bureaus, boards or commissions, shifting a modest and discrete subset of BPPE functions to the General Fund makes sense. Specifically, policymakers should consider using the General Fund to support (1) litigation costs paid to the Attorney General's (AG) Office to pursue enforcement actions and (2) the Office of Student Assistance and Relief (OSAR).

ATTORNEY GENERAL ENFORCEMENT COSTS

The Bureau refers enforcement actions to the Attorney General, as required by state law. However, AG costs are unpredictable, expensive, and not sufficiently resourced. Most schools appeal the judgements and dig in for a long-term battle with the State and, in doing so, require BPPE to continue accruing AG costs while the presumption of innocence allows the school to continue operating. This perverse fiscal incentive allows schools to continue bringing in revenue while BPPE is either required to spend dollars it does not have or drop the case entirely, the latter action begging the question: "How valuable is industry regulation without enforcement?" Given these challenges, a strong commitment to the enforcement of California's laws warrants a stable General Fund investment that allows BPPE to pursue bad actors without needing to sacrifice other elements of its mission. As one interviewee so eloquently put it "We don't expect local police departments to self-fund their operations, why would we expect the same for Bureau enforcement?" FoundationCCC believes this is an appropriate and recommended activity for state General Fund.

OFFICE OF STUDENT ASSISTANCE AND RELIEF (OSAR)

Created by the Legislature in 2017 without the appropriation of additional funding,[12] OSAR was intended, in the short term, to help students impacted by the closure of Corinthian Colleges. Long-term, OSAR is charged with ensuring that students struggling with the fallout from school closures or institutions' unlawful practices have support and resources when and where appropriate. The creation and operation of OSAR was described by some interviewees as an "unfunded mandate" that may not be appropriate for fee-generated revenue support, as OSAR goes beyond BPPE's role of college oversight, which the fees were developed to cover, to instead address the ramifications of an unstable industry on students. The workload of this unit is high, generally requiring one-to-one interactions between a student and BPPE staff. The Bureau has seven positions assigned to this unit with total costs of approximately $1.355 million annually. FoundationCCC believes that the Legislature should consider an

12 Senate Bill 1192 (Chapter 593, Statutes of 2016).

ongoing appropriation of $1.355 million annually (and adjusted appropriately as state personnel costs increase) to fully shift these costs to the General Fund.

Expand Use of Student Tuition Recovery Fund (STRF)

STRF exists to help students recover direct economic losses when their program, campus, or college closes.[13] The fund is created in statute and is only allowed to accrue a $25 million balance. At its November 8, 2023 meeting, BPPE announced that the fund balance has exceeded the cap and that institution assessments into the fund will be on hold effective April 1, 2024.

Given the purpose of STRF and the availability of funds, policymakers should consider allowing a small portion of the fund to be used to support students in additional ways, specifically by covering the costs related to transcript processing. For instance, many institutions and some states rely upon private entities to collect and store transcripts, and then later to provide them to students upon request for a fee (often around $25). Currently, BPPE receives and processes between 9,000 to 10,000 transcript requests from students each year, at no cost. Allowing the Bureau to assess a modest fee per transcript request, payable by STRF rather than the requesting student, would free up approximately $250,000 for ongoing BPPE operations, helping address its fiscal solvency, while continuing to refill the STRF.

Another appropriate use of STRF funding would be to cover the costs associated with administering the fund itself. Similar to public postsecondary education, which is able to fund administrative costs associated with its capital outlay

13 Education Code section 94923, et seq.

program from bond proceeds, the Legislature should consider shifting STRF's administration costs to the fund itself. Currently, BPPE spends about $1.112 million to administer STRF. A similar request made by BPPE in 2016-17 was denied by the Legislature during that year's budget process.

VII. Potential Efficiencies and Revenue Enhancements

"It is recommended that the Bureau examine its operations to identify potentially untapped [operational] efficiencies. [and revenue enhancements]."

This section explores what could be further revenue-enhancing and operational efficiencies within the Bureau. For each of these options, there may be additional operational costs for BPPE due to increased workload, but without more extensive information, it is impossible to determine if the benefits of these options will outweigh the costs. However, the Legislature may wish to further explore each of the following:

Operational Efficiencies

BPPE WORKFLOW AND PERSONNEL

The scope of this report does not cover an in-depth analysis of BPPE's operations, personnel needs, and costs. It is recommended that the Bureau examine its operations to identify potentially untapped efficiencies.

VALIDATE SELF-REPORTED SCHOOL REVENUE

BPPE relies solely on schools' self-reported data to assess annual and other fees. Since BPPE isn't otherwise privy to the finances of colleges, self-reporting without verification can lead to confusion, errors, and both intentional and unintentional misconstruing of data. Without an additional verification step, the Bureau may be assessing and accepting fee payments that are not true to the legislative intent. BPPE should create workload estimates for conducting this work and seek the appropriate level of resources to carry it out.

Revenue Enhancements

IMPROVE BPPE FINE AND PENALTY ASSESSMENTS

Over the last couple of years, BPPE has changed how it assesses fines and penalties to more fully utilize its statutory authority and better link each violation to the associated violation category. This is an example of an area where the Bureau previously was not fully utilizing its authority. Since making this a priority, the Bureau has increased the penalties assessed as well as the amount actually collected.

That said, there is a statutory limitation on the maximum amount for each violation, which is capped at $5,000.[14] While a fine of this amount would be impactful on an individual or a small business, large colleges and corporations can easily absorb this amount rendering the penalty meaningless. When the penalties for skirting the law become the accepted price of doing business, the penalty levels must increase. To this end, BPPE ought to be explicitly granted authority to establish regulations in connection with a review of the fine classification structure. This would allow the Bureau to better align the penalty amounts to the workload of BPPE while also considering the fiscal incentives on colleges to comply with the law.

14 Education Code section 94936(b)(2).

IMPROVE BPPE FINE AND PENALTY COLLECTIONS

While BPPE has authority to issue fines and penalties, it has little ability to collect those dollars. For example, in 2021-22, BPPE assessed $537,000 in fines and collected a little more than one-third ($190,000).[15] While the law includes guidelines for the Bureau in setting fines, including minimum and maximum fines per violation, fines may be reduced by an Administrative Law Judge on appeal, sometimes to small fractions of the initial fine determination. Offending schools either pay the penalty (sometimes starting on a payment plan) or, after receiving multiple citation notifications, BPPE sends the violation to DCA for further attempts to collect, either through the Franchise Tax Board or a collection agency.

While BPPE has authority to pursue legal action through the courts to collect on unpaid fees and fines (including filing an injunction against a school or issuing a money judgment order) the legal/enforcement costs that are incurred by the Bureau are usually too expensive to justify the benefit. The downside of this status quo is that only a small fraction of penalties assessed are collected and, perhaps more importantly, the inability to penalize bad actors only diminishes the efficacy of the regulatory structure. Schools are acutely aware of these costs and recognize that it is in their financial benefit to continue operating outside the law and avoid paying fines and penalties; each day they continue business-as-usual, they bring in more and more tuition revenues.

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15 2021-22 Department of Consumer Affairs Annual Report, p. 136

INCREASE COST RECOVERY RELATED TO DISCIPLINARY ACTIONS

Another mechanism through which the Bureau collects revenue is through a cost recovery mechanism that allows BPPE to explicitly ask for, and collect, dollars during legal judgments in order to recover the costs associated with investigating and processing disciplinary actions. This is another place where BPPE's ability to collect is minimal, primarily because the institutions required to pay these costs have likely had their approval to operate revoked and have no incentive to pay. BPPE currently does not have the authority to bill for cost recovery under any other set of circumstances, and even when it can assess these costs, the actual collections are only about one-third (for 2021-22 this was $22,000) of the approximately $66,000 in cost recovery fines ordered.[16] One option discussed earlier would allow BPPE to bill for travel costs for site visits.

Statutorily Define Key Terms, Definitions, and Usage

Unlike other states, California does not impose broadly applicable restrictions on the use of key terms and phrases. Terms like "college" or "university" are allowed to be used freely by exempt institutions and in ways that mislead consumers. Other undefined terms like "religious institutions" – which are exempt from oversight by the Bureau – provide large loopholes under which entire cottage industries exist to help schools take advantage of this exemption.

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16 2021-22 Department of Consumer Affairs Annual Report, p. 137

California should expand its list of prohibited business practices to include the use of key terms that would apply to all private postsecondary educational institutions operating in California, including those qualifying for exemption. This action would help to close loopholes that allow cottage industries to exploit California law. To accomplish this, BPPE should be authorized to: (1) Regulate the use of the terms “college” and “university”; (2) Define “religious institution”; and (3) Define “bona fide” institution.[17] For the Bureau to fulfill this role, it will also need to be explicitly allowed to assess and collect penalties and fines associated with the misuse of these terms.

Additional Payers

Having examined options for schools to pay more and for the State General Fund to chip in, the last potential payer is students. While it is generally inappropriate to charge students directly for costs that are already being borne through their tuition payments, policymakers may want to consider the option to charge private postsecondary graduates. In particular, the state could add a surcharge on the professional applications of graduates who enter licensed professions (e.g., nursing, cosmetology). The surcharge could be minor (several dollars) and would apply to those students graduating from BPPE-approved institutions as they are applying for their professional license. Charges could also be assessed on graduates not entering licensed professions. The cost of administering and collecting such a fee is presently unknown.

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17 Education Code section 94874(b) exempts “an institution offering educational programs sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization’s membership” from BPPE oversight.

VIII. Big Picture Reforms Warranted

"FoundationCCC believes that the time has come for policymakers to revisit BPPE's mission, function, organizational design, and placement within state government."

The previous sections provide a variety of recommendations and options for consideration to increase BPPE's revenue and stabilize the fund. But as this report was being researched, the options compiled and the recommendations written, it became apparent that, in addition to its fiscal solvency, there are larger questions about BPPE's structure and placement within government that are worth exploring if California wants to maximize its oversight of private postsecondary education.

DCA's mission is to "provide outstanding support services, oversight, and innovative solutions to boards and bureaus that regulate California professionals and vocations so that through this partnership all Californians are informed, empowered, and protected."[18] Yet BPPE does not regulate professionals or vocations, rendering the placement of BPPE under DCA a mismatch in this regard. Boards, Commissions, and Bureaus within DCA are expected to be entirely self-funded by industry-paid fees. DCA typically works best when its role is licensing an individual or a small business (an appliance repair professional or a vehicle repair shop, for example).

18 https://www.dca.ca.gov/about_us/index.shtml

Through the decades, policymakers have contemplated how to organize and where within government to place the regulation of private, vocational and technical, and Out-of-State schools. What began as a function to regulate trade schools like automotive repair and cosmetology has expanded substantially as a new industry of large for-profit degree granting colleges and universities found their way into the marketplace. This changing landscape has reshaped the Bureau not just into an industry regulator but, in many ways, something more akin to an academic accreditor[19] (50 percent of the schools it oversees being unaccredited).

The current statutory framework for BPPE was created almost 15 years ago,[20] when online education had not yet become the driving force in educational programming that it is now. Yet, it is this same outdated framework that serves as a basis for the Bureau's work today. As the author of this report, FoundationCCC believes that the time has come for policymakers to revisit BPPE's mission, function, organizational design, and placement within state government.

When exploring this topic with interviewees, most stakeholders said the Bureau was under-resourced (in its authority, personnel, and financial resources) for an entity with such high stakes for both student consumers and state accountability. In spite of the federal "triad" framework, some saw BPPE as serving an academic accreditation function, defining the Bureau's role as *education*, and suggesting it be housed as such. Others thought of BPPE as consumer protection but acknowledged the educational component of the

19 https://bppe.ca.gov/about_us/meetings/materials/20231108_acm.pdf, p. 26

20 Senate Bill 48 (Chapter 310, Statutes of 2009).

Bureau's work. These "both/and" roles and perceptions have left BPPE in a "no man's land," stuck between two culturally and operationally distinct silos. Even so, the vast majority of parties interviewed for this report agreed that DCA no longer seems to be a good fit to house BPPE. Yet, when asked where the Bureau's function would be more appropriately housed, most suggested California's "higher education agency," an organization that, among other things, would be able to provide robust research, forecasting, and analysis to keep up with rapidly shifting corporate and Out-of-State school trends. This entity does not currently exist.

The placement of a state entity within government directly impacts how, when, and in what context key issues are elevated to policymakers. Government agencies are often organized based on their areas of expertise and mission. Functions that require specialized knowledge or skills are typically placed within agencies that have a mandate that is aligned with those specific functions. Keeping this in mind, two potential solutions to house BPPE are offered below; there are likely other options as well.

BPPE as Department Under Business, Consumer Services and Housing Agency (BCSH)

One option is to move the Bureau out from under DCA and make it a parallel department under BCSH, equivalent to other entities such as the Department of Financial Protection and Innovation (DFPI). The functions of these two entities look similar but for different industries. Where DCA's boards and bureaus generally license individual professionals, DFPI, like BPPE, is charged with overseeing an entire industry. DFPI-like authority would be appropriate for BPPE so that it can be nimble and responsive to quickly and effectively respond to changes in the marketplace.

New State Department of Student Assistance and Institutional Support

The second option is for policymakers to create a cabinet-level state Higher Education Department using the functions of BPPE as an anchor. BPPE approves vocational and academic institutions and programs, essentially serving as an academic accreditor. This is a function that is appropriate for a new standalone department. This new department would be a cabinet-level entity serving several state needs, including an explicit acknowledgment that schools approved by the Bureau play a role in supporting the state's higher education goals.

Creating a new Department will better place oversight and accountability for private proprietary schools into the same space where public, accredited, nonprofit and Out-of-State schools are also being examined, while having the added benefit of bringing together career technical education with the private postsecondary vocational and trade institutions that provide further training. This new Department does not need to be limited to these functions only - it could serve many of the roles and functions for which California has long been struggling to place.

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APPENDIX

Recommendations with Currently Quantifiable Budget Impacts

Recommendations	Annual Estimated Budget Impact
Annual Fees 2021 BPPE/DCA Proposal (as previously modeled) • Increase annual fee from 0.55% of California derived revenues to 0.775% • Assess a new base fee of $3,500 • Decrease minimum fee to $1,000 (from $2,500) • Increase maximum fee to $80,000 (from $60,000) • Update nonprofit school contracted fee for "authorization" by BPPE to $1,500 (from $1,076)	+ **$7.9M** +$50,000 (included above)
Application and Substantive Change Fees 2021 BPPE/DCA Proposal (as previously modeled) • Increase application fees for all types of institutions (nonaccredited, accredited and exempt) • Increase substantive change fees • Assess a fee on each new program approval at nonaccredited institutions	+**$1.8M**
Automatic Inflator for Application Fees This is an estimate applying 3% growth factor based on app fees collected in 2022-23. Does not account for growth above app fee increases proposed above.	**+$27,000**

Cost Recovery for Approval/Compliance Visit Travel Costs	**+$150,000**
Increase fees for Out-of-State Schools to align to workload Revenue based on 100 schools **Option 1** • Charge $1,500 per year (currently $1,500 for 5 years) **Option 2** • Increase fees commensurate with those charged by other states to between $2,775 and $3,621 per year	**Between +$120,000 and +$640,000** +$120,000 +$639,628
Provide State General Fund for Attorney General (AG) and Office of Administrative Hearings (OAH) enforcement costs Represents the three-year average of AG and OAH enforcement costs	**+$918,000**
Provide State General Fund to support Office of Student Assistance and Relief (OSAR)	**+$1,355,000**
Use the Student Tuition and Recovery Fund (STRF) revenue to fund STRF personnel	**+$1,112,000**
Assess $25 per Student Transcript Fee to be paid by the STRF	**+$250,000**
Improve Fine and Penalty Collection Based on gap between fines assessed ($537,000) versus collected ($190,000) according to DCA 2021-22 Annual Report.	**Up to +$347,000**

Increase Recovery of Costs Related to Disciplinary Actions BPPE is only able to recover about one-third of the fines ordered through disciplinary hearings and legal proceedings. For 2021-22, this gap was about $44,000.	**Up to +$44,000**
Estimated annual revenue for combined recommendations	**+$14,543,000**
Additional Options to Consider	
Charge Private Postsecondary College Graduates an add-on fee when entering licensed professions Based on 39,000 graduates (2021) in licensed fields **Options for Charges:** • $2/grad • $5/grad • $8/grad	**Between +$78,000 and +$312,000** $78,000 $795,000 $312,000
Charge Private Postsecondary College Graduates in non-licensed professions a graduation fee Based on 72,000 graduates (2021) in non-licensed fields **Options for Charges:** • $2/grad • $5/grad • $8/grad	**Between +$144,000 and +$576,000** $144,000 $360,000 $576,000
Maximum estimated annual revenue combining all recommendations and options	**+$15,431,000**