



Advisory Committee Meeting Minutes Wednesday, November 3, 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. Senator Richard Roth
8. Kevin Powers (on behalf of Assemblymember Jose Medina)
9. Margaret Reiter

Committee Members Absent

Diana Amaya
David Vice

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
Robert Bayles, Bureau Education Administrator Chief
Jason Alley, acting Bureau Enforcement Chief
Clarisa Serrato-Chavez, acting Bureau Enforcement Chief
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
Greg Pruden, DCA Legislative Manager
Adam Wright, California Department of Financial Protection & Innovation Senior Counsel

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

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

Ms. Lee Carey welcomed Senator Richard Roth to the Committee. Senator Roth stated that he is looking forward to participating on the Committee. He explained the California legislature relies on groups like the Committee to assist in the effective implementation of laws and regulations. He designated Sarah Mason, Staff Director of the Business Professions and Economics Development Committee, to serve in his position.

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

No Public Comment.

Agenda #3 - Review and Approval of August 26, 2021, Advisory Committee Meeting Minutes

Public Comment

No Public Comment.

Margaret Reiter moved to approve the minutes; Kansen Chu seconded the motion. (Ms. Lee Carey: 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 DCA is assembling a task force to create a telework policy that will provide further clarity and structure for managers and staff to combat the spread of Covid-19 and protect vulnerable communities. She explained that California has implemented enhanced safety measures for state employees and workers in health care settings. She noted, as of early October, state employees must show proof of vaccination or be subject to regular Covid-19 testing.

Ms. Holmes explained DCA recognizes the difficulty of planning for future meetings as the pandemic continues. She stated that remote meetings are allowed by law until January 30, 2022. She stated there are benefits to remote meeting options such as increased public participation, cost savings, and a lower carbon footprint due to reduced travel. She added that DCA encourages Boards and Bureaus to continue utilizing remote meetings this year.

Public Comment

No public comment.

Agenda #5 – Bureau Operations Update and Discussion

Update on the Bureau’s IT System Project

Robert Bayles, Bureau Education Administrator Chief, provided an update on the Bureau’s IT system project. He reported that the project end date has been extended to April 3, 2022.

Mr. Bayles stated the project team is currently working on the Student Tuition Recovery Fund application processing in the back office, the annual fee submission process online, and continuing work on the data migration from the old to the new system.

Mr. Bayles reported that user acceptance testing is set to begin on February 14, 2022, and the final project release is set for April 3, 2022. He noted that the project is projected to be completed under budget.

Mr. Holt asked how much of the Bureau’s work has been positively impacted by the release of project deliverables. Mr. Bayles responded that the Bureau has full functionality of the online initial approval to operate application process and full functionality of the online complaint process.

Ms. Reiter commented on the school search function on the Bureau’s website. She stated that annual report and enforcement information is not tied to a school when a school is populated through the search function. She suggested that the website should provide students with the ability to search for a school and allow the student to see all relevant information about that school in one place. Mr. Bayles noted that the Bureau is working on creating a more comprehensive school look-up function. Ms. Reiter asked when that functionality would become available. Mr. Bayles responded that the data migration portion of the project must be completed first. He noted that once the data migration is complete the goal is to create a space on the website where school information will be all together.

Public Comment

Angela Perry provided a comment.

Beverly May provided a comment.

Annual Report (AR) Report

Mr. Bayles provided a report on the Annual Report Unit (ARU).

Mr. Bayles stated that there is a School Performance Fact Sheet (SPFS) virtual workshop scheduled for November 16, 2021. He added that schools can register on the Bureau website. He noted that staff is working on putting together a workshop for the Annual Report. Ms. Reiter asked if any schools have never filed an annual report. Mr. Bayles responded that he did not have that information with him but could find out.

Ms. Lee Carey asked if schools could update previously reported data. Mr. Bayles stated that schools just need to contact ARU to have prior reports updated.

Public Comment

No public comment.

Quality of Education Report

Mr. Bayles provided a report on the Quality of Education Unit (QEU). He outlined Attachment 5c.

Public Comment

No public comment.

Compliance and Discipline Report

Jason Alley, acting Bureau Enforcement Chief, provided a report on the Compliance and Discipline Unit. He outlined Attachment 5d.

Mr. Holt asked what the normal goal is for the number of completed inspections. Mr. Alley responded the goal is to meet the legal mandate of inspecting a school at least twice in five years.

Ms. Reiter asked how many inspections were canceled due to a school refusing the inspection. Mr. Alley responded that none of the cancellations in the current report were due to a school refusing the inspection.

Ms. Reiter asked if any schools have never been inspected since 2010. She added that she would like to have that information at the next meeting.

Public Comment

No public comment.

Complaint and Investigation Report

Clarisa Serrato-Chavez, acting Bureau Enforcement Chief, provided a report on the Complaint and Investigation Unit.

Ms. Serrato-Chavez reported that the new online complaint form, which can be submitted with attachments in real-time, has helped streamline the complaint intake process. She recommended anyone needing to file a complaint or wanting to submit a tip to use the Bureau online complaint form that can be found on the Bureau website. She noted the form has an option to let the user remain anonymous.

Ms. Serrato-Chaves outlined Attachment 5e.

Ms. Reiter asked what happens to a complaint regarding a state authorization contracted school when the complaint is deemed unresolvable. Ms. Serrato-Chavez explained that staff will attempt to resolve the complaint while also reaching out to or referring the student to other agencies that may be able to help the student depending on the nature of the complaint.

Mr. Holt recommended reporting on the total number of complaints that are coming from schools that are otherwise exempt but have a state authorization contract with the Bureau. He suggested adding state authorization contracted schools as a category in the chart that breaks out the number of internal and external complaints.

Public Comment

Angela Perry provided a comment.

Licensing Report

Bureau Licensing Chief, Ebony Santee, reported on the Licensing Unit. She outlined Attachment 5f.

Ms. Reiter asked if a school with standing disciplinary issues may continue to operate after the approval period has expired if the school has a pending renewal application. Ms. Santee explained that the school may continue to operate as long as the renewal application is submitted on time. Ms. Reiter suggested looking at the statutes and regulations in consideration of a school continuing to operate while potentially not meeting the standards for renewal.

Public Comment

No public comment.

Office of Student Assistance and Relief (OSAR) Report

OSAR Chief, Scott Valverde, provided a report on OSAR.

Mr. Valverde reported that all allocated staff positions in OSAR have been filled. He noted that OSAR is now looking for new and different ways to expand engagement with students.

Mr. Valverde covered Attachment 5g. He noted that OSAR has been focusing more and actively working more in the area of social media. He added that fiscal year to date OSAR social media accounts have had about 10,000 engagements.

Public Comment

No public comment.

Student Tuition Recovery Fund (STRF) Report

Bureau Administration Chief, Yvette Johnson, provided a report on STRF. She covered Attachment 5h.

Ms. Reiter asked how old the oldest STRF claims are awaiting analysis and determination. She also asked what the typical processing time is to process a STRF claim from beginning to end. Ms. Johnson stated some claims are three years or older due to extenuating circumstances, including awaiting a determination from the US Department of Education on federal loan discharge applications. She noted that STRF claim processing times have been impacted by a large influx of claims received from former Silicon Valley University (SVU) students.

Ms. Johnson outlined the “Silicon Valley University Closure and STRF Impact” memo provided in the meeting packet.

Mr. Holt asked how the 891 outstanding STRF claim applications are being prioritized. Ms. Johnson responded that applications are handled on a first in first out basis. Mr. Holt asked if any of the SVU student claims were graduates. Ms. Johnson stated that some are graduates. She added that some of the harm is based on the loss of value in a SVU degree. Mr. Holt asked at what point or time is student harm being considered. Ms. Johnson stated that the time is based on when the Bureau started its initial investigation of the school. Mr. Holt asked if claims are being considered based on a class of students or individually. Ms. Johnson stated each claim is dealt with individually. Mr. Holt asked if it would be grounds for denial of a claim if a student is working in a field they received a degree in. Ms. Johnson responded that would be grounds for denial unless the student showed they had to do their education over to work in the field. Mr. Holt commented that based on the number of claims and the established approval criteria that there is a substantial level of liability.

Ms. Reiter commented that it would be worthwhile to do an analysis to determine what situations could potentially lead to a major hit to the STRF fund. Ms. Reiter suggested considering putting a mechanism in place for the Bureau to pick up on news stories related to a school prior to somebody taking an action against the school. She added it would be a good idea to analyze closed schools to determine what are some common red flags to look for with schools that are still operating. Ms. Cochrane commented that DCA does have a function in place that flags licensees when they are mentioned in the press. She continued that the Bureau does spend quite a bit of time trying to determine what went wrong when a student has been harmed and whether the Bureau could have done more to prevent the harm. She added there has a bit of consideration on how exactly the Bureau can analyse data as it becomes available through annual reports or otherwise, and how to utilize data more quickly and dynamically.

Mr. Holt recommends having a future discussion on any insight that might be applied to the statutory language involving STRF. He noted the preponderance of foreign nationals studying abroad in CA, while the STRF balance for many years protected CA students. He continued that the statute is written in such a way that residency programs do qualify for STRF, but it would be useful to do a fresh review of the statute to ensure it is being utilized as the legislatures originally intended it to. He suggested considering some sort of bounds or protections around this kind of specific use case.

Ms. Reiter suggested adding a claim category in future STRF reporting for claims that were denied due to being reimbursed elsewhere.

Public Comment

Angela Perry provided a comment.

Agenda Item #6 - Status Updates on Regulations

Discussion of STRF Fee Increase Proposal (CCR Section 76120)

Ms. Johnson outlined the STRF fee increase proposal. She explained that STRF has fallen below the 20 million dollar mark, which requires the Bureau to begin collecting a fee. She noted that in February 2021 the fee was set at 50 cents per thousand dollars of institutional charges, at which rate \$1.4 million would be collected annually. Ms. Johnson explained that based on the current fee and the projected payout of STRF claims the fund would be depleted by 2023. She stated that beginning on April 1, 2022, the STRF assessment fee will be raised to \$2.50 per thousand dollars of institutional charges to replenish the fund and ensure sufficient resources to cover payouts to students.

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)

David Dumble, Bureau Legislative/Regulation Specialist, provided a status update on the Application for Verification of Exempt Status regulatory package.

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))

Mr. Dumble provided a status update on the draft language for the labor market outcome data reporting regulatory package.

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))

Mr. Dumble provided a status update on the Out-of-State Institution Registration Form regulatory package.

Public Comment

No Public Comment.

Agenda Item #7 - Update and Discussion on Recently Chaptered Legislation Impacting the Bureau (Senate Bill 802 and Senate Bill 607)

Greg Pruden, DCA Legislative Manager, provided an update on recent legislation impacting the Bureau. He outlined Senate Bill (SB) 802 and SB 607.

Ms. Cochrane provided a high-level overview of implementation plans for SB 802. She pointed out that some changes that will require extensive deliberation and planning including the need to modify forms and regulations. She noted the change in definition to “Educational Programs” and the questions related to the implementation of the change.

Ms. Cochrane discussed some of the changes to the Advisory Committee. She noted the addition of annual elections for chair and vice chair, and she suggested holding elections at the February 2022, Advisory Committee meeting. She also mentioned the requirement to adopt reasonable rules of conduct and proposed having that on the agenda for the next meeting.

Senator Roth commented on the one-year sunset and the impact Covid-19 had on the review process. He noted the intent to do a more comprehensive review of Bureau operations during

the next review. He also pointed out the need to address the Bureau's fiscal challenges and the potential need to use General Fund.

Ms. Reiter asked how the change to the definition of "Educational Programs" changes how the Bureau will handle programs that do not lead to employment. She stated it would be helpful to have an analysis on how many existing programs will no longer fall under the Bureau's supervision. She pointed out the uncertainty in how the change affects the exemption for avocational/recreational programs. Ms. Lee Carey suggested that the change would allow an approved institution to offer a program, as defined by the change, without the Bureau needing to approve that program. She noted the difference in institutional exemption and program exemption that did not exist before this change. Ms. Cochrane noted that there are no clear answers to some of the questions because the Bureau is still working on defining some of the changes based on the broader array of implications of Bureau oversight. She added that the Bureau is working on packaging some of these questions to get feedback.

Ms. Reiter commented on the need to have some discussion on the language regarding the new term limits of the Chair/Vice Chair to the Advisory Committee.

Public Comment

Angela Perry provided a comment.

Robert Johnson provided a comment.

Marcy provided a comment.

Agenda Item # 8 - Discussion on Recent State and Federal Actions on Income Share Agreements and their Relevance to the Bureau

Ms. Cochrane provided a brief overview of Income Share Agreements (ISA) and their relevance to the Bureau. She introduced Adam Wright of the California Department of Financial Protection & Innovation (DFPI).

Mr. Wright introduced himself as an attorney with the Innovation Office of DFPI. He explained that the Innovation Office is a new office of DFPI intended to monitor and encourage the growth of responsible innovative financial products in California. He noted that he was previously in the Enforcement Group for 8 years and dealt with lending and credit products including ISA.

Mr. Wright referred to the memo titled "Recent State and Federal Actions on Income Share Agreements and their Relevance to the Bureau for Private Postsecondary Education" that is provided in the meeting packet. He pointed out that trends show that ISA are going to be regulated as credit by state and federal regulators. He added that treating ISA as credit ensures

that student borrowers receive the full suite of available protections, and ensures the products are subject to additional oversight and supervision that all credit products receive.

Mr. Wright explained the importance of coordination among all interested regulators at the state and federal levels. He stated coordination is key to maximizing student borrower protection. He added that the DFPI encourages students to file complaints relating to ISA, and welcomed the Bureau to refer to them any complaint related to financial products including ISA.

Ms. Lee Carey commented on those in the institutional and educational technology sector who are eager to understand compliance in the implementation of an ISA. She pointed out the question of whether an ISA is considered a tuition arrangement or a financing tool. She suggested an ISA should be considered a financing tool and that the Bureau should treat an ISA as such. She noted that financial oversight from the Consumer Financial Protection Bureau (CFPB) and DFPI is really helpful because it establishes expectations on how an ISA will be used. She continued that she is hopeful the Bureau will consider and treat an ISA as a financing tool, like a loan.

Ms. Reiter asked Mr. Wright if the ISA he has seen were agreements between a school and a student, or between a lender and a student. Mr. Wright stated he has seen agreements between a school and a student, and a third party financier and a student. Mr. Wright added he would be happy to get back with the Committee on what all he has seen with ISA.

Ms. Reiter pointed out that the CFPB recognized that an ISA needs to include Truth in Lending Act (TILA) disclosures. She also added that it seems that ISA are subject to the Federal Trade Commission (FTC). She asked if that connection had been considered. Mr. Wright noted DFPI has been considering the issuer side, and there is more to come on those topics in the future.

Ms. Lee Carey asked if DFPI is considering regulations to incorporate ISA into the Servicing Act and the Lending Licensing Act. Mr. Wright responded that the DFPI is pursuing and will propose specific regulations regarding services and issuers of ISA.

Ms. Reiter commented that the Bureau should be cooperating and coordinating with other agencies who may be interested in the topic. She continued that she raised the issue of the holder in due course rule that was set up to protect people who finance a product or service when then the product or service turns out to be useless. She added that rule was established to prevent a creditor that was involved in the arrangement from attempting to collect even when the product or service turns out to be useless. She noted that in California statute when a school is a party in the financing, the school is required to provide a notice of consumers rights to the student. She stated that the Bureau needs to be ensuring these protections are made clear to students and should be working with other agencies to ensure these provisions are carried out. She added that the Bureau should put any California school using ISA on notice indicating the school is in violation if not complying with truth and lending and holder in due course rules.

Mr. Wright provided an example of one DFPI consent order with an ISA servicer that included a provision that made sure the ISA servicer would not be able to service the ISA if the DFPI or another regulator, like the Bureau, determined the agreement void and unenforceable. He added that DFPI recently attained broader authority to protect consumers under the California Consumer Financial Protection law. Ms. Reiter suggested, concerning the language in the consent order, to consider that CFPB has already indicated an ISA is in violation unless it complies with TILA. Ms. Lee Carey pointed out that the issue with TILA and ISA is not about disclosures and consumer protections but how the TILA standard form is structured in traditional financing with the amount charged and interest charges. She continued that regulatory change could lead to an ISA specific form while still including all the requirements of transparency and disclosures to students.

Mr. Holt commented that, while it is a positive note for schools and ISA providers to be categorized as a student loan instrument, the downside is the problem in fitting an ISA into the current regulatory language. He stated that the current language is insufficient to effectively address how to handle an ISA.

Ms. Reiter commented that there needs to be more consideration regarding STRF and ISA. Ms. Lee Carey stated that institutions and ISA providers have reported the total amount of the program tuition with the idea that STRF would be handled the same way as a loan if the school closed. She added if a student applied for STRF assistance, then it would be based on what the student had paid up until that point.

Ms. Lee Carey asked if DFPI has considered retail installment contracts with an income-based payment model. Mr. Wright stated it is something DFPI is aware of and thinking about while working to provide guidance in compliance.

Public Comment

Claire Torchiana provided a comment.

Jordan Wicker provided a comment.

Angela Perry provided a comment.

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)

Ms. Cochrane opened up a discussion on SB 118. She referenced the memo titled "Senate Bill 118 Prohibition on Use of Applicants' Criminal History in Admission Decisions (CEC Section 66024.5)" that was provided at the last Committee meeting.

Mr. Holt provided suggestions on how to address the issue. He outlined three ways to address the issue including notice, advising, and application standards.

Mr. Holt explained that notice provides clear communication to all students during the admission process that criminal history and/or criminal convictions may harm the student's ability to complete the educational program and/or secure in-field employment after graduation. He added that this would fall under a broad category of disclosures with written and verbal communication provided to the students. He noted that it would be made clear that the student is not being asked to provide that information.

Mr. Holt explained that advising would include a reminder of the notice and an encouragement to students during orientation for newly enrolled students to consider self-disclosing in a one-on-one conversation with an academic dean or program director (academic professional) regarding the impact criminal convictions may have on a student's career path. He stated that rubrics outlining what types of convictions could be a major problem or unlikely to be a high-risk area are provided to academic professionals.

Mr. Holt pointed out, concerning educational programs requiring clinical externships, some clinical affiliation agreements require criminal background checks. He noted that occurrence is not covered in SB 118. He explained that when an educational program requires an externship through an affiliated medical provider that requires a criminal background check the student would have to do the background check to complete the program. He continued that is an area in the application process that needs a clearly defined standard stating a student seeking a professional degree requiring an externship through a clinical affiliation must complete a background check. He added that information provided by a student that could potentially impact that student's ability to complete an educational program could lead somewhere between advising the student to proceed with extreme caution or the cancellation of an enrollment agreement.

Ms. Reiter asked whether regulatory or statutory changes need to be made to require the process Mr. Holt outlined. She noted the concern of schools not providing clear disclosures upfront, and enrolling students who will never be able to get a job in that field of study. She provided an example of a regulatory change adding a requirement that schools disclose to students that a criminal history could prevent the student from completing the program or getting a job. She noted the point of doing the check soon enough after enrollment to protect the student from owing money for a program that will not lead to placement. Mr. Holt suggested a two or three-sentence clear disclosure that speaks to this issue. Ms. Reiter also suggested a potential statutory change that would entitle a student to a full refund if enrolled in a program when it is highly unlikely the student will gain employment due to the person's criminal background. Ms. Lee Carey stated that there is language already in place protecting students from enrolling in a program if the student will not benefit from the training. Mr. Holt noted the question of financial liability in an instance when a student passes a background

check with no convictions initially, but then later in the program are convicted of a crime and are unable to continue the program.

Public Comment

No public comment.

Agenda #10 – Future Meeting Dates

Ms. Lee Carey opened a discussion on the proposed meeting dates.

Public Comment

No public comment.

Agenda #11 – Suggestions for Future Agenda Items

Ms. Reiter noted how impactful one large closure can be to STRF. She suggested a discussion on the statutory language detailing when a STRF assessment fee can be accessed relating to the total fund amount.

Ms. Reiter suggested the Committee consider a vote recommending the legislature provide the Bureau general funding for Bureau operations.

Ms. Reiter suggested the Bureau provide the Committee a report on an after-action assessment of a closed school to determine what steps were taken and what changes may be needed.

Ms. Reiter suggested the Committee have a discussion to consider limits on how much time an institution is given to respond to deficiencies when applying for a renewal to operate.

Ms. Reiter suggested the Committee discuss recommending that the legislature no longer consider the Bureau for sunset.

Ms. Lee Carey suggested the Committee have more discussion on ISA.

Public Comment

Robert Johnson provided a comment.

Agenda #12 – Adjournment

The meeting adjourned at 2:07 pm.