



The Honorable Steven Glazer
 Senate Business, Professions, and Economic
 Development Committee
 State Capitol, Room 2053
 Sacramento, CA 95814

The Honorable Connie Leyva
 Senate Education Committee
 State Capitol, Room 2083
 Sacramento, CA 95814

The Honorable Evan Low
 Assembly Business and Professions Committee
 Legislative Office Building, Room 379
 Sacramento, California 95814

The Honorable Jose Medina
 Assembly Higher Education Committee
 Legislative Office Building, Room 173
 Sacramento, California 95814

April 24, 2020

RE: Bureau for Private Postsecondary Education and COVID-19 Response

Dear Chairs Glazer, Leyva, Low, and Medina:

We represent a group of student, veteran, consumer, civil rights, and higher education advocates focused on ensuring that higher education students in California are protected from predatory schools and have access to high quality education that does not leave them with unmanageable debt. We recognize the significant consideration and effort involved in the sunset review of the Bureau for Private Postsecondary Education (Bureau), and that the COVID-19 crisis may prevent the Legislature from considering relevant issues and proposals in full. However, because the crisis itself increases the need for robust oversight of private postsecondary education, we urge you to move forward immediately on two specific, targeted reforms that will better position the Bureau to protect Californians during the crisis.

The Risk to Students is Great in the Wake of COVID-19

The “Great Recession” of 2007-2010 coincided with a long period of deregulation of for-profit schools at the federal level.¹ Unfortunately the overlap led to a significant increase in enrollment at a time when institutions were under reduced scrutiny.² The current recession triggered by COVID-19 also unfortunately comes at a time when the federal government has abdicated its responsibility to protect students from predatory programs. This is evidenced by the rollback or weakening of rules on accreditation, gainful employment, borrower defense, and

¹ David Whitman (June 7, 2018). “The GOP Reversal on For-Profit Colleges in the George W. Bush Era.” The Century Foundation. Available at: <https://tcf.org/content/report/gop-reversal-profit-colleges-george-w-bush-era/>.

² Stef W. Knight (Sep. 15, 2018). “How the Great Recession Fueled For-Profit Colleges.” Axios. Available at: <https://www.axios.com/great-recession-for-profit-college-education-debt-d6d33ec8-b4ac-47ae-aeeb-c5e39a3a9447.html>.

state authorization, among others.³ In response to the Great Recession and the wave of predatory behavior at for-profit schools that accompanied it, California stepped up to create stronger consumer protections and better oversight of private postsecondary institutions. Now is the moment for California to do so again.

Taking action in 2020 to protect students is more important than ever because of the COVID-19 recession, as doing so will directly save the General Fund from the additional costs of increased public caseload for those seeking to reorient their professional path in the wake of this devastating economic downturn.

Experts have forecasted that the unemployment rate in California may rise as high as 20 percent this year,⁴ dwarfing the unemployment rate California experienced in the last recession.⁵ If enrollment trends in the wake of COVID-19 remain consistent with those during the Great Recession, there is cause for concern; from 2007-2010 undergraduate enrollment at for-profit colleges skyrocketed, growing by as much as 19 percent a year in California and 22 percent a year nationally.⁶ Low-income and unemployed individuals were aggressively targeted for recruitment when the job market dried up, and predatory for-profit colleges portrayed themselves as an attractive option to many students. But the promises were often too good to be true.

Students at for-profit universities are less likely to graduate and more likely to have significant debt and default on their loans, compared to their traditional 4-year-degree counterparts.⁷ The most vulnerable students - including veterans, foster youth, students of color, and single mothers - are often targeted by predatory programs, bear a disproportionate risk, and suffer the consequences.⁸ Predatory colleges have historically preyed on the poorest students, and for-profit programs disproportionately serve low-income individuals.⁹ For example, during the last recession the median family income of students attending for-profit colleges was only slightly higher than the U.S. Census Bureau's poverty threshold for a family of four.¹⁰ California has experience with the fallout of

³ Andrew Kriehbaum (June 12, 2019). "Rewriting the Rule Book for College Accreditors." Inside Higher Ed. Available at: <https://www.insidehighered.com/news/2019/06/12/trump-administration-issues-proposal-loosen-standards-college-accreditors>. Paul Fain (Nov. 1, 2019). "New Rules on Accreditation and State Authorization." Inside Higher Ed. Available at: <https://www.insidehighered.com/news/2019/11/01/education-department-issues-new-regulations-accreditation-and-state-authorization>.

⁴ Margot Roosevelt (April 17, 2020). "California Coronavirus Unemployment Surges as Payrolls Shrink for First Time Since 2010." The Los Angeles Times. Available at: <https://www.latimes.com/business/story/2020-04-17/california-jobs-unemployment-layoffs-march-2020>.

⁵ Dale Kasler and Phillip Reese (April 1, 2020). "Shutdown Drives California Unemployment to Great Recession Levels in Barely a Month." The Sacramento Bee. Available at: <https://www.sacbee.com/news/california/article241667501.html>.

⁶ The Institute for College Access & Success. College Insight, <http://college-insight.org>. Student debt and undergraduate financial aid data are licensed from Peterson's Undergraduate Financial Aid and Undergraduate Databases, © 2019 Peterson's LLC, all rights reserved. All data may be reproduced, with attribution, subject to restrictions under this Creative Commons license: <https://creativecommons.org/licenses/by-nc-nd/3.0/>.

⁷ Peter Smith and Leslie Parrish (Oct. 2014). "Do Students of Color Profit from For-Profit College?" Center for Responsible Lending. Available at: <https://www.responsiblelending.org/student-loans/research-policy/CRL-For-Profit-Univ-FINAL.pdf>.

⁸ Rajashri Chakrabarti, Michael Lovenheim, and Kevin Morris (Sept. 7, 2016). "The Changing Face of the Higher Education Market." Liberty Street Economics. Available at: <https://libertystreeteconomics.newyorkfed.org/2016/09/the-changing-face-of-the-higher-education-market.html>. Veterans Education Success (Jan. 1, 2014). "Why For-Profit Schools are Targeting Veterans Education Benefits." Available at: <https://vetsedsuccess.org/why-for-profit-institutions-are-targeting-veterans-education-benefits/>. Christina Cauterucci (Sept. 22, 2017). "More Single Mothers Are Going to College Than Ever. But Very Few Will Graduate." Slate. Available at: <https://slate.com/human-interest/2017/09/for-profit-schools-and-low-graduation-rates-plague-a-rising-population-of-single-student-mothers.html>. Annie Waldman (March 18, 2016). "How a For-Profit College Targeted the Homeless and Kids With Low Self-Esteem." ProPublica. Available at: <https://www.propublica.org/article/how-a-for-profit-college-targeted-homeless-and-kids-with-low-self-esteem>. Genevieve Bonadies, Joshua Rovenger, Eileen Connor, Brenda Shum and Toby Merrill (July 30, 2018). "For-Profit Schools' Predatory Practices and Students of Color: A Mission to Enroll Rather than Educate." Harvard Law Review Blog. Available at: <https://blog.harvardlawreview.org/for-profit-schools-predatory-practices-and-students-of-color-a-mission-to-enroll-rather-than-educate/>.

⁹ https://capseecenter.org/wp-content/uploads/2016/07/ForProfit_Nimble-Critters_Feb-2012.pdf

¹⁰ Algernon Austin (Aug. 8, 2012). "For-profit colleges have the poorest students and richest leaders." Economic Policy Institute. Available at: <https://www.epi.org/blog/profit-colleges-poorest-students-richest/>.

predatory institutions, with the closure of Corinthian Colleges a vivid example of what happens when there is insufficient oversight and regulation of the industry.¹¹

The Role of the Bureau for Private Postsecondary Education in COVID-19 Response

The Bureau serves an essential function for the state of California, encapsulated in the text of the agency's enacting statute: "...Protection of the public shall be the bureau's highest priority."¹² The Bureau is tasked with serving as the first line of defense for students who enroll in private postsecondary programs, and the primary state-level regulator of for-profit schools in California. The Bureau is statutorily proscribed to sunset at the end of 2020, and is scheduled to undergo a sunset review and reauthorization process this year. We previously submitted comments with recommendations to make the Bureau more effective and better able to achieve the goals the state has set for the agency, and all of these proposals remain deserving of consideration.¹³ While we understand that time, capacity, and funding are all in critically short supply in the wake of COVID-19, it is essential not only that the Bureau be reauthorized this year, but that the reauthorization be responsive to the COVID-19 recession and its fallout. We strongly urge you to prioritize oversight of for-profit institutions as the state's response and recovery policies are decided.

Given limitations, there are two critical recommendations put forth in the Bureau's 2019 Sunset Review Report which we believe must be incorporated into any reauthorization legislation undertaken this year:

I. Recommendation: Enable the Bureau to Prevent Harm to Students Proactively

California law currently requires the Bureau to demonstrate that a student has already been harmed as the result of a school's misconduct before it can place the school on probation or suspend or revoke the school's license. However, as the Bureau identified in the Sunset Review Report, this "harm requirement" has forced the Bureau to be reactive, rather than proactive, and prevents the Bureau from taking action until students have already suffered harm, which for many students is far too late and which, from a regulatory perspective, fails to minimize or eliminate future harm. Additionally, this limitation is out of step with other DCA agencies, such as the Bureau of Security and Investigative Services¹⁴ and Bureau of Household Goods and Services,¹⁵ which are empowered to suspend or revoke certain licenses based on a finding that the licensee has engaged one or more prohibited activities, including violation of governing laws.¹⁶

We agree with the Bureau's recommendation to amend the "harm requirement" in Education Code § 94937, because requiring harm to occur before taking action to halt misconduct is counter to the Bureau's paramount duty to protect students and the public. We urge that this change be made immediately to better protect students in the wake of COVID-19. At a time when enrollment is likely to increase, and when abusive practices may newly emerge, it is especially important that the Bureau has the authority to swiftly act in the best interests of students.

¹¹ Office of the California Attorney General (Oct. 24, 2018). "Information for Former Corinthian Colleges Students." Available at: <https://www.oag.ca.gov/corinthian>.

¹² California Education Code § 94875.

¹³ "Comments on Sunset Review of Bureau for Private Postsecondary Education" (March 9, 2020). Available at: <https://ticas.org/california/accountability-california/comments-on-sunset-review-of-bureau-for-private-postsecondary-education/>.

¹⁴ California Business and Professions Code § 7591.

¹⁵ California Business and Professions Code § 9810.

¹⁶ California Business and Professions Code § 7599.61(b) (regarding alarm company licenses); id. § 9855.7(c) (regarding service contractor licenses).

II. Recommendation: End Automatic Approvals for Accredited Institutions

California law currently grants automatic approval to accredited institutions in California, without requiring them to undergo the review and approval process required for other institutions that operate in California.¹⁷ This automatic approval is in contrast to the requirements placed on other institutions operating within California, including out-of-state institutions offering online education to California students.¹⁸ Accreditation has long been considered a marker of institutional quality, but with federal accreditation rules and standards substantially weakened¹⁹ this method of approval is now tantamount to a significant loophole. For accredited schools, the Bureau must grant approval, relying solely on the institution's accreditation as assurance that the school has the capacity to satisfy California's minimum operating standards and offers quality educational programs.²⁰ This serves neither students nor the state of California well, and requires the state to give up critical review functions for student and consumer protection.

Merely receiving accreditation should not be a sufficient criterion to merit approval to operate within California, especially in such a potentially dangerous time for students. Many of the major school closures in recent years have been at institutions that were accredited until the day they closed their doors, and yet schools that qualify for this easier approval method are approved for twice the amount of time as schools that go through the regular approval process. In fact, of the last five major school closures in California, four of the schools had been approved by means of accreditation.²¹ Further, because only accredited schools can receive federal financial aid, students attending accredited schools can be at particular risk of incurring debts they cannot repay.

The U.S. Department of Education's oversight of the Accrediting Council for Independent Colleges and Schools (ACICS) lays bare the insufficiency of accreditation as a safeguard. ACICS, which accredited Corinthian Colleges,²² was derecognized in 2016, based on "pervasive compliance problems."²³ When discussing the decision, then-Under Secretary Ted Mitchell cited "such wide and deep failure that they simply cannot be entrusted with making the determinations we, you and the public count on."²⁴ Yet only two years later, the Trump administration took steps to re-recognize ACICS, despite being out of compliance with required standards, and the accreditor is again operating with the approval of the Department.²⁵ Despite the Trump administration's misguided confidence in ACICS, the accreditor recently made news for approving a school with no students, no faculty, and no classrooms.²⁶ Further, new federal regulations allow colleges to continue to operate out of

¹⁷ California Education Code § 94890.

¹⁸ Assembly Bill 1344 (2019). California State Legislature. Available at: https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1344.

¹⁹ Paul Fain (Nov. 1, 2019). "New Rules on Accreditation and State Authorization." Inside Higher Ed. Available at: <https://www.insidehighered.com/news/2019/11/01/education-department-issues-new-regulations-accreditation-and-state-authorization>.

²⁰ California Education Code § 94890.

²¹ See Bureau for Private Postsecondary Education (2019). *Sunset Review Report*, at 70. Available at https://www.bppe.ca.gov/forms_pubs/sunset_2019.pdf.

²² Andrew Kreighbaum (Nov. 26, 2018). "DeVos Restores Recognition for Troubled For-Profit Accreditor." Inside Higher Ed. Available at: <https://www.insidehighered.com/news/2018/11/26/devos-restores-authority-profit-accreditor>.

²³ John B. King (Dec. 12, 2016). "Decision of the Secretary." U.S. Department of Education. Available at: <https://www2.ed.gov/documents/acics/final-acics-decision.pdf>.

²⁴ Ted Mitchell (June 22, 2016). "Remarks to the National Advisory Committee on Institutional Quality and Integrity." U.S. Department of Education. Available at: <https://www.ed.gov/news/press-releases/under-secretary-education-ted-mitchell%E2%80%99s-remarks-national-advisory-committee-institutional-quality-and-integrity-june-22-2016>.

²⁵ Diane Auer Jones (Sept. 28, 2018). "Senior Department Official's Response to ACICS." U.S. Department of Education. Available at: https://www.insidehighered.com/sites/default/server_files/media/SDO%20Response%20to%20ACICS%209.28.18.pdf.

²⁶ Chris Quintana and Shelly Conlon (Feb. 16, 2020). "This College Was Accredited by a DeVos-sanctioned Group. We Couldn't Find Evidence of Students or Faculty." USA Today. Available at: <https://www.usatoday.com/story/news/education/2020/02/15/college-accreditation-department-education-betsy-devos-south-dakota-sioux-falls/4746906002/>.

compliance with accreditors for longer periods of time, lowers standards for accreditors themselves to be approved, and leaves the Department of Education with few tools to hold accreditors accountable for failing to take action against failing colleges.²⁷

Approving schools by means of accreditation puts students at risk, and particularly heightened risk given recent federal actions to weaken accreditation rules.²⁸ We agree with the Bureau’s recommendation that all schools should be subject to the same approval process, and propose that the issue could be addressed by changing the statutory language in Section 94890(a)(1) to say “The bureau ~~shall~~ **may** grant an institution that is accredited an approval to operate by means of its accreditation” as part of any reauthorization legislation passed this year. This language change would give the Bureau more discretion to determine whether accredited institutions should be approved to operate within California, and if there should be other factors in making the determination.

Conclusion

These proposed changes would not satisfy the need for a more thorough and complete evaluation of the Bureau through sunset review, but they would improve the Bureau’s ability to respond to the current crisis. The Bureau and the Department of Consumer Affairs identified both of these recommendations as outstanding policy issues that have previously prevented them from fulfilling their charge to protect the public.²⁹ We concur that giving the Bureau more authority and discretion in these areas would make the Bureau more effective and better able to protect students at this critical time. Further, because the Bureau is specially funded, these changes would not require general funds be made available.

Given the risk, it is urgent that the Bureau be reauthorized, and that adequate steps are taken in that effort to both give the Bureau sufficient oversight authority and to empower the Bureau to act when necessary to protect students. We urge you to include these specially funded reforms among those that are decided upon this year.

Sincerely,



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²⁷ U.S. Department of Education (Nov. 1, 2019). “Student Assistance General Provisions, The Secretary’s Recognition of Accrediting Agencies, The Secretary’s Recognition Procedures for State Agencies.” Federal Register. Available at: <https://www.federalregister.gov/documents/2019/11/01/2019-23129/student-assistance-general-provisions-the-secretarys-recognition-of-accrediting-agencies-the>.

²⁸ Paul Fain (Nov. 1, 2019). “New Rules on Accreditation and State Authorization.” Inside Higher Ed. Available at: <https://www.insidehighered.com/news/2019/11/01/education-department-issues-new-regulations-accreditation-and-state-authorization>.

²⁹ Bureau for Private Postsecondary Education (2019). *Sunset Review Report*. Available at: https://www.bppe.ca.gov/forms_pubs/sunset_2019.pdf.



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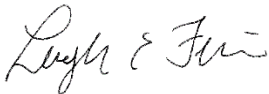
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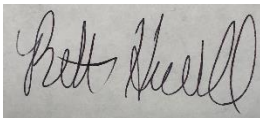
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