February 19, 2016

Sent via electronic mail

Senator Jerry Hill, Chair
Committee on Business, Professions and Economic Development
California Senate
State Capitol, Room 2053
Sacramento, CA 95814

RE: Bureau for Private Postsecondary Education Sunset Review Comments

Dear Senator Hill:

The undersigned organizations represent students and consumers in California—and focus on our state's most vulnerable populations including low-income residents, people of color, veterans, and former foster youth. We are advocacy nonprofits, civil rights law firms, and legal services organizations directly representing students enrolled at for-profit education institutions. We have been actively engaged in ensuring that when Californians seek to improve their lives through education, they are presented with quality choices at a cost they can cover when they are successfully employed after program completion. Where programs fall short of this standard – for instance, when they fraudulently represent the outcomes of their students, or leave their graduates with a sub-par degree and insurmountable debt – students deserve redress and the program must be improved or shut down.

Californians have been disproportionately harmed by for-profit institutions that fail to deliver on their promises to students. The vast majority of students affected by the closure of Corinthian Colleges last April were enrolled in Corinthian-owned campuses of Heald, Everest, or Wyotech Colleges, and only a small share of them have received federal[1] or state financial relief.[2] The majority of students enrolled at Westwood College – a troubled for-profit college chain that recently stopped enrolling new students[3] –

[1] U.S. Dep't of Educ., *Second Report of the Special Master for Borrower Defense to the Under Secretary* at 2, Dec. 3, 2015, *available at* https://www2.ed.gov/documents/press-releases/report-special-master-borrower-defense-2.pdf.
[2] See *supra* note 9.
[3] Inside Higher Ed, *Fall of a For-Profit*, Dec. 8, 2015, *available at* https://www.insidehighered.com/news/2015/12/08/profit-westwood-college-wont-accept-new-students.

are enrolled in California campuses. Of the 56 campuses of Marinello Schools of Beauty, which closed its doors unannounced earlier this month, 39 are located in California.[4] For-profit education business are one of the most troubles business sectors in the nation. As stated recently in The New York Times, "in recent years, more than two dozen companies that run for-profit colleges have been investigated or sued by state prosecutors. To handle the load, 37 state attorneys general have teamed up to form a working group. Together, the 152 schools under investigation received about $8.1 billion in federal student loan and grant payments last fiscal year."[5] It is of paramount importance that California ensure that its oversight of these schools, and protections for students who enroll in them, are strong.

Our comments are geared towards ensuring students are protected by the Bureau as its first and foremost duty and as required by law:

> **In exercising its powers, and performing its duties, the protection of the public shall be the bureau's highest priority. If protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.**
> Cal. Educ. Code § 94875.

To that end, we submit the following recommendations. While we have seen multiple efforts the Bureau has made to improve its functions, we agree with the State Auditor that "many of the [Bureau's] problems of the past persist today."[6]

(1) **Make student complaints a priority:** The Bureau has appropriately been moving forward on prioritizing which complaints necessitate the most urgent investigation; however, student complaints as a whole do not seem to be a top priority. In its Sunset Review Report, the Bureau presents data illustrating that ***the backlog of complaint investigations has steadily increased over the past three years***, from 707 pending investigations in 2012-2013 to 1016 pending investigations in 2015-2016. ***The Bureau is also taking two times longer to close investigations*** than it did three years ago (179 average days in 2012-2013 and 380 days in 2015-2016).[7] In contrast, the Bureau has nearly eliminated the backlog for licensing new schools, stating that "[b]y the time staff was hired in November of 2010 a backlog of approximately 1,100 [licensing] applications existed. As of October 31, 2015, there are approximately 140 applications pending assignment that are considered "backlog."[8]

    For the Bureau to protect the public, complaints must be top priority over its other activities, including application licensing.

(2) **Fund assistance for students in particular need:** While the Bureau has made improvements in how it reaches out to students at closed schools (evidenced by its response to the Marinello Schools of Beauty closure) it has very limited staff to handle student claims for relief and the state has refused to fund external legal assistance with the veto of AB 573 (Medina, 2015).

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[4] Los Angeles Times, *Marinello Schools of Beauty abruptly shuts down after federal allegations*, Feb. 5, 2016, available at http://www.latimes.com/business/la-fi-marinello-closing-20160205-story.html.
[5] Patricia Cohen, *For Profit Colleges Accused of Fraud Still Receive U.S. Funds*, The New York Times, Oct. 12, 2015.
[6] California State Auditor, *Recommendations for the Legislature From Audits Issued During 2014 and 2014* at 4, Jan. 2016.
[7] Bureau for Private Postsecondary Education, *Background Information and Overview of the Current Regulatory Program* at 27-28, Dec. 1, 2015, available at http://www.bppe.ca.gov/about_us/index.shtml.
[8] *Id.* at 17.

Students desperately need the Legislature to ensure students at closed schools have access to the assistance they need to file for the relief they are legally due. While the Bureau met with 80% of the 4,000+ affected Everest and Wyotech students, it has received applications from less than 7% of these students and with only two Student Tuition Recovery Fund (STRF) analysts, it cannot possibly outreach to and timely assist the remaining 93% of these students eligible for STRF relief.[9] Filing for STRF relief is a complex process and unfortunately the Bureau's closed school materials are out of date, only in English, and do not direct students to critical information such as the federal closed school loan discharge application process.[10] In the last ten months alone, between the Corinthian, Westwood, Four-D and the Marinello closures, thousands of Californians have been left out in the cold. These students, largely Black and Latino, low-income, and first-generation college goers are being seriously wronged by these schools and neither the Bureau nor legal services organizations are able to meet their critical needs. This must be rectified.

(3) **Make leadership changes to promote an emphasis on student protection.** The Advisory Committee is designed to be a diverse and well-rounded set of voices to advise the Bureau, but it cannot be so if seats go vacant for years, if members do not show up, or if the Bureau disregards their majority votes. The Bureau has yet to fill a critical employer member seat on the Advisory Committee, one student member has failed to ever attend a meeting (and has been employed by for a for-profit institution), and one institutional representative has only attended one meeting during all of 2015.[11] The one time we are aware the Advisory Committee took a vote was at its February 18, 2015 meeting, when it passed a motion advising the Bureau to use a 45 day (five week) minimum requirement for gainful employment standards as required by AB 2296 (Block, 2012).[12] The Bureau, however, ignored this recommendation and instead used a 21 day requirement favored by the industry, without an explanation.[13]

Stronger legislation would ensure the Advisory Committee's expertise is appropriately valued. We recommend Advisory Committee members be required to attend meetings and be free of conflicts of interest, and that the Bureau follow any majority votes of the Advisory Committee unless it presents its rationale for deviating from them in writing at an Advisory Committee meeting.

During the Sunset Review process, the Legislature should also ensure that it creates and enforces deadlines for any current or future regulatory packages it requires or anticipates from the Bureau. Of the six regulatory packages the Bureau has had on its plate over the past three years, it has only completed two.[14] The regulations required by AB 2296 to be promulgated by July 1, 2015 still have not been sent to the Legislative Analyst's Office.

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[9] *Background Information* at 43.
[10] *See* Bureau for Private Postsecondary Education, *Closed School Guide,* April 21, 2014, available at http://www.bppe.ca.gov/students/guide_closed.pdf.
[11] *Background Information* at 4-6.
[12] Advisory Committee Meeting Minutes, February 18, 2015, available at http://bppe.ca.gov/about_us/meetings/minutes_20150218.pdf.
[13] *See* Department of Consumer Affairs Bureau for Private Postsecondary Education, *Uniform Reporting Requirements Modified Text*, Feb. 12, 2016, available at http://www.bppe.ca.gov/lawsregs/modtext_20160212.pdf.
[14] *Background Information* at 8-9.

We suggest the Legislature also explore other options to ensure the Bureau prioritizes students and public accountability and transparency, including the creation of a senior staff position within the Bureau to oversee the focus on student needs. While the Bureau has made positive changes in its functions over the past year and a half, there remains much room for improvement. The Bureau's Sunset Review Report is a 1,300 page document with no table of contents, page numbers, or executive summary, rendering it virtually unusable.[15]

(4) **Expand authority over online schools**, specifically out-of-state online schools that lack a physical presence in California. Distance education is the fastest growing segment of higher education,[16] but California law has not kept up. Out-of-state companies can enroll Californians in online education *without complying with consumer protections for postsecondary students under California law*, as long as the school has no physical presence in the state.[17] This giant loophole leaves Californians vulnerable to predatory marketing, low-value programs, and fraud.

There is no reason to conclude that for-profit online education schools are less likely to engage in the types of deceptive practices used by brick-and-mortar schools. A U.S. Senate investigation found that exclusively on-line students at for-profit institutions have lower retention rates, on average, than students who attend classes at physical locations.[18] The largest distance education schools are owned and operated by the same for-profit school companies that have been the subject of multiple law enforcement investigations.[19] Even schools with a physical presence in California can avoid California law by separately incorporating their distance education schools and locating the headquarters in other states.

The Private Postsecondary Education Act should be amended to cover online distance education providers that enroll California students. Online education students should not be treated differently than brick-and-mortar students. They are equally deserving of protection from unscrupulous for-profit companies.

(5) **Strengthen the Student Tuition Recovery Fund.** STRF is an important financial lifeline for students harmed by for-profit schools. However, current rules and internal policy guidelines limit the ability of many harmed students to recover their substantial educational investments. We urge the Legislature to carefully consider where changes in STRF law are warranted and we

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[15] Bureau for Private Postsecondary Education, *2015 Sunset Review Report*, available at http://www.bppe.ca.gov/about_us/index.shtml.

[16] Office of the Inspector General, Dep't of Educ., *Title IV of the Higher Education Act Programs: Additional Safeguards are Needed to Help Mitigate the Risks That are Unique to the Distance Education Environment*, ED-OIG/A07L0001 at 4, 6 (Feb. 2014).

[17] Cal. Ed. Code § 94858.

[18] U.S. Senate, Health, Educ., Labor and Pensions Comm., *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, S. Rpt. 112-37 at p. 5 (July 30, 2012). *See also*, Adam Rust, *I Feel Like I Was Set Up to Fail': Inside a For-Profit College Nightmare*, www.Salon.com (Jan. 25, 2014) (detailing story of California student who enrolled in on-line courses at Everest University Online (owned by Corinthian Colleges) and Art Institute of Pittsburg (owned by EDMC) who now owes over $6000 for her courses, but didn't earn a single credit hour).

[19] National Consumer Law Center, *Ensuring Educational Integrity: 10 Steps to Improve State Oversight of For-profit Schools* (June 2014); *see also* U.S. Senate, Health, Educ., Labor and Pensions Comm., *For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success*, S. Rpt. 112-37 at 13 (July 30, 2012).

recommend careful consideration of each of the proposals put forward by the Legal Aid Foundation of Los Angeles.

Thank you for the opportunity to comment.

Sincerely,

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Housing and Economic Rights Advocates

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