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

The Honorable Jose Medina  
Assembly Higher Education Committee  
1020 N Street, Room 173  
Sacramento, California 95814

March 9, 2020*

RE: Bureau for Private Postsecondary Education Sunset Review

Dear Chairs Glazer and Medina:

We represent a group of student, veteran, 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. Thank you for the opportunity to offer comments relating to the sunset review of the Bureau of Private Postsecondary Education (Bureau) and the California Private Postsecondary Act of 2009.

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.” Encouragingly, in the most recent Sunset Review Report, the Bureau and the Department of Consumer Affairs (DCA) identified several outstanding policy issues that have previously prevented them from fulfilling their charge to protect the public and made recommendations for improvements. We concur that giving the Bureau more authority – appropriately paired with sufficient capacity – would make the Bureau more effective and better able to achieve the goals the state has set for the agency. Below, we discuss several of the Bureau’s recommendations which we believe to be high priorities, along with others of our own.

I. Bureau Recommendations

Recommendation: Expand Authorizing Scrutiny to Accredited Institutions as well as Unaccredited Institutions

The Bureau currently grants two types of approvals to operate: an approval to operate ("full approval") and an approval to operate by means of accreditation. A full approval is granted after the Bureau has independently verified the application information provided by the institution through site visits or other appropriate methods, and has determined that the institution has the capacity to satisfy the state’s

* Resubmitted on March 12, 2020 with a minor correction.
1 California Education Code § 94875.
minimum operating standards. However, a loophole currently exists which grants automatic approval to accredited institutions. For these 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.³

Merely receiving accreditation should not be a sufficient criterion to merit approval to operate within California. Many of the major school closures in recent years were at schools 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.⁴ 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.

Recent federal actions compound the need for state policy change. First, the U.S. Department of Education’s oversight of the Accrediting Council for Independent Colleges and Schools (ACICS) lays bare the insufficiency of this safeguard. ACICS, which accredited Corinthian Colleges,⁵ was derecognized in 2016, based on “pervasive compliance problems.”⁶ 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.”⁷ 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.⁸ Despite the Trump administration’s confidence in ACICS, the accreditor recently made news for approving a school with no students, no faculty, and no classrooms.⁹

Second, the Trump administration has rewritten federal regulations in ways that relax standards and will encourage a race to the bottom in quality.¹⁰ New regulations allow colleges to continue to operate out of compliance with accreditors for longer periods of time, lowers standards for accreditors themselves to be

³ California Education Code § 94890.
⁹ 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-siouxFalls/4746906002/.
approved, and leaves the Department of Education with few tools to hold accreditors accountable for failing to take action against failing colleges.\textsuperscript{11}

Approving schools by means of accreditation puts students at risk, and particularly heightened risk given recent federal actions. We agree with the Bureau’s recommendation that all schools should be subject to the same approval process, and that process should be rigorous enough to ensure students and taxpayers are protected, as well as flexible enough to allow new entrants into the postsecondary marketplace. However, a stronger initial approval is not sufficient to ensure ongoing quality. Schools must also be subject to minimum operating standards to ensure that students are protected even after the initial approval to operate is issued.

**Recommendation: Authorize the Bureau to Create Stronger Minimum Operating Standards**

Over the past three years, the Trump Administration has systematically dismantled protections against predatory and low-quality colleges and universities. In addition to the accreditation changes discussed above, it repealed the Gainful Employment rule that required career education programs to ensure that most of its graduates’ debts were reasonable relative to their likely earnings.\textsuperscript{12} It replaced the Borrower Defense rule that is intended to provide debt relief to student borrowers harmed by illegal and deceptive practices;\textsuperscript{13} the new rules will deny relief to harmed students on nearly 97 percent of their debts.\textsuperscript{14} The Administration also eliminated the enforcement unit within the Department of Education that was intended to detect and prevent wrongdoing.\textsuperscript{15}

The areas in which the Bureau is currently authorized to adopt minimum operating standards are largely focused on recordkeeping and technical aspects of a school’s operations.\textsuperscript{16} This limits the Bureau’s ability to fulfill its mission of protecting students and consumers through effective oversight of schools. The Sunset Review Report concludes that adoption of additional minimum standards that address educational quality, the cost of school, student outcomes, and institutional improvements would allow the Bureau to better fulfill its mission.\textsuperscript{17} The Legislature encountered a similar policy question several years ago when considering AB 2099 (2014), and ultimately delegated authority to the California State approving

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\textsuperscript{16} California Education Code § 94885.

Agency for Veterans Education (CSAAVE) to create minimum standards for institutions to be eligible to enroll students in California.\textsuperscript{18}

Similarly, expanding the Bureau’s authority to adopt additional minimum operating standards to address educational quality and cost will allow the Bureau to better protect students from predatory schools. Minimum operating standards are essential to empower the Bureau to take appropriate action against schools that provide substandard education and engage in misconduct to keep up student enrollment numbers, including by shutting them down, before the harm widely impacts students and taxpayers. In addition, the Bureau’s disciplinary action findings in these expanded areas may be helpful for students harmed by predatory schools before the Bureau has sufficient information to act, providing evidence that will support their applications for relief from the Student Tuition Recovery Fund (STRF) and for discharge of federal student loans. We agree with the recommendation to authorize the Bureau to create appropriate minimum operating standards, and believe it is essential that the Bureau be empowered to proactively take action if they determine a school is in violation of those standards or are otherwise putting students at risk.

**Recommendation: Enable the Bureau to Prevent Harm to Students Proactively**

California law currently requires the Bureau to demonstrate that student harm has resulted from 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. Additionally, this limitation is out of step with other DCA agencies, such as the Bureau of Security and Investigative Services\textsuperscript{19} and Bureau of Household Goods and Services,\textsuperscript{20} 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.\textsuperscript{21}

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. The Legislature should additionally determine if obstacles are preventing the Bureau from bringing more cases to the Attorney General’s (AG) office and ensure that the Bureau nor the AG are prevented from taking action against bad actors who put students at risk. Providing sufficient authority and capacity to ensure that the Bureau can serve and protect students is essential, both while the school is operating and in the event that it closes.

**Recommendation: Require Schools to Obtain Surety Bonds of Sufficient Value to Cover Costs in the Event of a Closure**

For-profit school closures have a direct impact on the Bureau’s capacity and costs. When a school closes the Bureau must send personnel to the location to triage students’ needs at a minimum. School closures can also require unexpected statewide travel and lodging expenses, potential additional staffing needs, and that the Bureau assume responsibility for tens of thousands of student records with little or no notice

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\textsuperscript{19} California Business and Professions Code § 7591.

\textsuperscript{20} California Business and Professions Code § 9810.

\textsuperscript{21} California Business and Professions Code § 7599.61(b) (regarding alarm company licenses); id. § 9855.7(c) (regarding service contractor licenses).
and no increased funds to do so. The Bureau currently has no access to emergency funding to cover these costs, and generally has to find ways to address student needs despite lack of funding.

Many other states have addressed this need by requiring private postsecondary schools to post a surety bond to cover the costs incurred by the state when schools fail and close. However, most of these states base the surety amounts on gross tuition or number of students, which often result in bond amounts insufficient to cover the many and varied costs that arise when a school closes. The Bureau has had to respond to several school closures in the last several years, and the Legislature should gather information from the Bureau relating to the cost of responding to those closures in order to determine the appropriate scale for California’s surety bond requirement.

We agree with the recommendation that California should create a bond requirement with minimum amounts that would adequately fund the Bureau’s costs in triaging school closures, including the retention of documents that are essential for students who seek relief through closed school discharges, STRF applications, and borrower defense claims. The requirement should clarify that any amounts recovered from a closed school’s surety bond should be applied to the Bureau’s response to aid students impacted by the closure or who need student records to be able to demonstrate eligibility for debt relief.

In addition to the recommendations provided by the Bureau, below we detail several recommendations of our own.

II. Additional Recommendations

**Recommendation: Require programs to prepare Californians for licensure or certification in fields where licensure or certification are required.**

A basic precondition for career education programs in California is that they provide the knowledge and skills necessary for jobs in their fields. However, there is no requirement that approved career programs actually make their graduates eligible for licensure or certification necessary for employment.

In 2014, the federal government required – as a condition of eligibility for student financial aid – that colleges certify that their career programs satisfy state and federal accrediting and licensing requirements for the jobs for which the program purports to prepare students. The Department of Education identified the disconnect between educational programs and professional requirements as one of its “primary

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concerns” among career programs. While these student protections were repealed in 2019, this remains a legitimate concern for states interested in ensuring career program quality for their residents.²⁵

These protections are especially important for students who enroll in out-of-state colleges – either online programs or local campuses of large brick-and-mortar schools – but intend to work in California. Those schools should not be able to offer programs to Californians unless graduates are eligible for licensure or certification in California when required in the professions for which they trained. California should make qualification for state licensure a requirement for career programs, and limit enrolment in all programs which do not meet state licensure requirements.

Recommendation: Improve Transparency in Complaint Handling and Resolution as Well as Triggers for Bureau Action

Over the course of the last two years, the Bureau has successfully developed procedures which have reduced the number of backlogged student complaints. However, while the majority of those complaints have been designated to be outside of the Bureau’s jurisdiction or unsubstantiated, there is little information about how that determination was made. The Bureau has not been able to provide further data regarding these determinations, or to break out the reasons these complaints were put into those categories. Further, although the Bureau has reported about the results of their new streamlined complaint handling process, there is little or no transparency into the process itself, and no way to determine if it is sufficiently serving the impacted students, or if student interests are being overlooked in the pursuit of efficiency.

Complaints are especially important, both because it is one of the most direct ways the Bureau can assist students, and also because they offer critical information to assist the Bureau in identifying red flags and patterns of abuse. The available data indicate that knowledge about the Bureau’s very existence is low among students, and it is extremely likely that there are students with complaints who have never submitted them because they did not know there was an opportunity. The outreach OSAR has been doing has certainly raised awareness of the Bureau, but it is insufficient to address the need. Given the dual consumer protection functions served by complaints, there needs to be a plan put in place to ensure that students are informed about the Bureau, and know that they can bring concerns about their school to the Bureau.

The Legislature has previously directed the Bureau to prioritize inspections and investigations based on patterns of student complaints and red flags identified by other entities charged with oversight of private postsecondary schools, including accreditors and the U.S. Department of Education and other federal entities,²⁶ but there is little transparency into whether or how the Bureau has done so. It is unclear whether complaints and other information is being monitored by the Bureau, what actions are taken when red flags are identified, and whether the Bureau has adequate capacity to fulfill this responsibility. More transparency is needed into the Bureau’s process, for the purposes of understanding trends of concern as well as identifying the areas in which the Bureau’s authority and oversight most need improvement.

Recommendation: Improve the Student Tuition Recovery Fund

The Office for Student Assistance and Relief (OSAR) has done valuable work raising awareness of the Bureau’s presence among students, and doing outreach work to students who have been harmed by school

²⁶ See California Education Code § 94932.5(b), and § 94941(b) through (e).
closure. However, despite these efforts, STRF remains woefully underutilized. The Bureau does not publish consistent data regarding the number of school closures or affected students, but the available data indicate that the number of students who receive or even apply for STRF relief in any given year represents an alarmingly small percentage of the students who have been impacted by closure.\footnote{Noah Zinner (2019). “Bittersweet Relief: Strengthening California’s Tuition Recovery Fund to Better Support Students.” The Institute for College Access and Success. Available at: \url{https://ticas.org/wp-content/uploads/2019/08/bittersweet-relief.pdf}.} There is insufficient transparency around why STRF has remained so underutilized, although information presented at recent Bureau Advisory Committee meetings indicate that there is a growing backlog of unprocessed STRF claims.\footnote{Bureau for Private Postsecondary Education (Feb. 19, 2020). “Notice of Advisory Committee Meeting and Agenda.” Available at: \url{https://www.bppe.ca.gov/about_us/meetings/agenda_20200219acm.pdf}.}

There are also several ways that the STRF program itself could be improved to better serve harmed students. These include extending STRF relief eligibility to more students harmed by misconduct and illegal acts by private postsecondary institutions, simplifying and streamlining the application process, and providing more assistance to students who apply.\footnote{Noah Zinner (2019). “Bittersweet Relief: Strengthening California’s Tuition Recovery Fund to Better Support Students.” The Institute for College Access and Success. Available at: \url{https://ticas.org/wp-content/uploads/2019/08/bittersweet-relief.pdf}.} If authorized, an independent advocate – such as an ombudsman or an inspector general – could identify these types of shortcomings and opportunities to better serve students, and advocate for the Bureau and/or Legislature to take steps to address them.

The Bureau and OSAR must provide more transparency into and improve the utilization of STRF, and the Legislature should consider how to best ensure that an official student advocate is directed to elevate issues like this and advocate for solutions that will best serve students.

**Conclusion**

Thank you again for the opportunity to provide comments. The sunset review process provides a unique opportunity to consider how oversight of private postsecondary education might be enhanced to better position students for success, and we appreciate your consideration of these recommendations. Please feel free to contact us with any questions.

Sincerely,

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CC: Senator Connie Leyva, Chair of the Sen. Education Committee  
Assemblymember Evan Low, Chair of the Asm. Business and Professions Committee