Oversight Hearing of the Senate Committees on
Education and Business, Professions, and Economic Development

California Bureau for Private Postsecondary Education: Is California missing the mark in promoting quality education and student protections?

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Thank you for the invitation to provide a broad overview of higher education oversight and outline some recent developments worthy of consideration by your committees.

The Institute for College Access & Success is a nonprofit, nonpartisan research and policy organization with headquarters in Oakland and Washington, D.C. TICAS focuses on federal and California state policy aimed at improving college affordability, equity, and accountability.

While the topic of today's hearing is the Bureau of Private Postsecondary Education, my remarks are aimed at providing some of the broader context needed to both understand how the roles and expectations of other overseers are evolving, and emerging trends that call for particular attention in California.

I will outline why the state role in college oversight is more important than ever, and discuss both problems and solutions pertaining to abrupt college closures, false and inaccurate recruiting information, and online education offered by out-of-state colleges. My comments focus on colleges that are eligible for federal financial aid, because the availability of federal financial aid can create troubling incentives against which both students and taxpayers need protection.

Under federal law, there are three entities that share responsibility for overseeing higher education institutions that use federal aid: accrediting agencies, the federal government, and states.

Accrediting agencies are tasked with ensuring educational quality. Accrediting agencies are membership organizations that use peer review to assess whether individual schools are adhering to established standards. The federal government relies upon these agencies' determination that schools are of sufficient quality for federal investment. Regional accrediting agencies serve a defined geographical region, and accredit mostly public and nonprofit colleges. National accrediting agencies typically have more of a career focus and oversee mostly for-profit colleges.

Historically, the **federal government** has focused on colleges' fiscal stability and compliance with the programmatic rules of the student aid programs. It enforces minimum standards set by Congress, such as the requirement that no more than 30 percent of student loan borrowers from a college default for three consecutive years and that for-profit colleges receive no more than 90 percent of their revenue from federal student aid programs. It additionally sets some of its own, such as the requirement that career education programs leave their graduates with manageable debts. The Department also provides student loan discharges to students whose schools close or defrauded them.

States approve all educational institutions that operate within their borders and establish processes for how they will oversee those colleges. They also establish consumer protections for their residents who are enrolled in college. These responsibilities are recognized in federal law, which requires colleges eligible for student aid to demonstrate that they are legally authorized by their state and that their state has a process for accepting and acting upon complaints about the school. In California, the primary entity tasked with this role is the Bureau of Private Postsecondary Education (BPPE).

Federal law and regulation provide parameters of expected levels of oversight from each of these entities, with widely varying levels of granularity. For instance, federal law recognizes states' broad authority to regulate as they deem appropriate, whereas Congress and the U.S. Department of Education have defined very clear terms and standards for both federal oversight and that of accrediting agencies.

However, these roles may be evolving in ways that are critical for states to understand.

The Trump Administration is currently mid-stream in an ambitious deregulatory effort[1] that would weaken oversight by both accreditors and the federal government.[2] For instance, the administration has proposed changes that would effectively eliminate distinctions between regional accrediting agencies and national accrediting agencies.[3] Yet this distinction is relied upon by California to target both oversight and funds. Schools accredited by the regional accreditor serving California, the Western Association of Schools and Colleges (WASC) are

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[1] U.S. Department of Education. Negotiated Rulemaking for Higher Education 2018-19. Available at: https://www2.ed.gov/policy/highered/reg/hearulemaking/2018/index.html.

[2] Amy Laitinen, Clare McCann, and Jared Cameron Bass. (January 7th, 2019). Negotiated Rulemaking 2019. Available at: https://www.newamerica.org/education-policy/reports/negotiated-rulemaking-2019/.

[3] U.S. Department of Education, "Summary of Changes to Accreditation 34 CFR 602", provided in advance of negotiations held January 17-18, 2019. Available at https://www2.ed.gov/policy/highered/reg/hearulemaking/2018/summary-602-accreditation.docx

exempt from BPPE oversight under state law.[4] For colleges eligible to receive state Cal Grants, the size of the Cal Grant they can receive depends on whether or not they are accredited by WASC. These provisions would make little sense if the delineations between regional and national accrediting agencies were erased.

In another proposed change, current rules allow accredited colleges to outsource up to half of an academic program to outside entities which may themselves be unaccredited. The Trump administration has proposed to raise this 50% limit, to 75%, providing taxpayer subsidy to programs offered primarily by unaccredited providers.[5] Earlier in its negotiations, the administration proposed to eliminate the limit entirely and permit 100% of a program to be outsourced.[6]

Also, under current federal rules, accrediting agencies themselves must comply with a slate of criteria to demonstrate their ability to hold colleges accountable. Agencies that do not meet these criteria lose federal recognition, meaning that that agency's accreditation no longer enables schools to receive federal aid. While accrediting agencies losing recognition in this way is incredibly rare, it occurred recently when the Obama Administration in 2016 ended recognition of the Accrediting Council for Independent Colleges and Schools (ACICS).[7] The Trump Administration in 2018 reversed this decision, while acknowledging that ACICS was still not in compliance with required standards.[8] Now, the administration is proposing to change accrediting agency rules to allow recognition of agencies that merely show "substantial compliance" with the standards, not full compliance, further weakening the meaning of accreditation.[9]

The Trump Administration is also weakening or eliminating federal oversight of colleges. It proposed to eliminate the federal “gainful employment” rule enforcing the Higher Education Act’s requirement that career education programs prepare students for gainful employment in a

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[4] California Education Code § 94874. Available at: https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=94874.&lawCode=EDC

[5] U.S. Department of Education, “Distance Learning and Educational Innovation 668 Student Assistance General Provisions,” provided in advance of negotiations held February 12-13, 2019, Available at: https://www2.ed.gov/policy/highered/reg/hearulemaking/2018/studentassistancegeneralprovisions.pdf

[6] U.S. Department of Education, “668 Student Assistance General Provisions,” provided in advance of negotiations held January 17-18, 2019, Available at: https://www2.ed.gov/policy/highered/reg/hearulemaking/2018/668-student-assistance-general-provisions.docx

[7] U.S. Secretary of Education. Decision of the Secretary. Available at: https://www2.ed.gov/documents/acics/final-acics-decision.pdf

[8] U.S. Department of Education. Senior Department Official’s Response to ACICS. Available at: https://www.insidehighered.com/sites/default/server_files/media/SDO%20Response%20to%20ACICS%209.28.18.pdf

[9] U.S. Department of Education, “Proposed revisions to 34 CFR 602,” February 11,, 2019”, Available at: https://www2.ed.gov/policy/highered/reg/hearulemaking/2018/602accreditationcleansession2.pdf

recognized occupation.[10] The administration has also proposed to scale back rules providing student loan discharges to students in connection with fraud or other illegal activities of their colleges, and is not processing the claims of 139,000 applicants.[11] State-level accountings of the claims by state, for both total claims submitted and claims still pending, show that more than one in five claimants are Californians.[12] While any new rules would not go into effect until July 2020 at the very earliest and may be challenged in court, they nonetheless represent a far-reaching deregulatory agenda that would scale back student and taxpayer protections while opening new avenues for potential abuse.

Congress is also poised to reauthorize the Higher Education Act governing federal financial aid programs, and Democrats and Republicans have voiced widely divergent views on what changes need to be made to appropriately hold colleges accountable.[13] Republicans in the House have proposed to entirely eliminate the use of cohort default rates and the 90-10 rule, in favor of alternative measures for which no data are available.[14]

As a result, it would be appropriate for states to think of their consumer protection role more broadly than they may have in the past, to ensure that their residents have the level of protection the state deems appropriate regardless of how the federal government proceeds.

I would like to discuss with you three important developments in the for-profit college landscape and how they relate to California.

The first is the issue of schools that close unexpectedly and before students are able to finish their programs. Since the 2015 closure of Corinthian Colleges, which primarily affected

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[10] U.S. Department of Education. U.S. Department of Education Proposes Overhaul of Gainful Employment Regulations. Available at: https://www.ed.gov/news/press-releases/us-department-education-proposes-overhaul-gainful-employment-regulations.

[11] U.S. Department of Education. Borrower Defense to Repayment Loan Forgiveness Data. Available at: https://studentaid.ed.gov/sa/about/data-center/student/loan-forgiveness/borrower-defense-data.

[12] Senator Dick Durbin. Borrower Defense Data from the U.S. Department of Education. Available at: https://www.durbin.senate.gov/imo/media/doc/BD%20data%20QFR%20response%20Attachment%207.2018.pdf. (According to data provided by the U.S. Department of Education to U.S. Senator Dick Durbin, there were 99,335 pending claims with 20,545 from California as of May 2018.) Senate Health, Education, Labor and Pensions Committee. Borrower Defense Data from the U.S. Department of Education. https://www.help.senate.gov/imo/media/doc/Murray%20BD%20Report%20updated%2012-20-18.pdf. (Data provided by the U.S. Department of Education to U.S. Senator Patty Murray showed that 46,982 of 200,630 total claims filed were from Californians as of September 2018.)

[13] *See* Andrew Kreighbaum. (February 2, 2018). Inside Higher Ed. Alexander White Paper Lays Out Framework for Higher Ed Accountability. Available at: https://www.insidehighered.com/quicktakes/2018/02/02/alexander-white-paper-lays-out-framework-higher-ed-accountability. *See also* Andrew Kreighbaum. (March 1, 2019). Inside Higher Ed. Democratic Take on the Higher Education Act. Available at: https://www.insidehighered.com/news/2019/03/01/senator-patty-murray-says-higher-education-legislation-must-focus-college.

[14] H.R.4508 - PROSPER Act. (2017-2018). U.S. Congress. Available at: https://www.congress.gov/bill/115th-congress/house-bill/4508.

Californians, several other for-profit college chains have closed their doors. Westwood College enrolled primarily Californians before it closed. Of the 56 campuses of Marinello Schools of Beauty that closed in 2016, 39 of them were in California. Other closures, including ITT Technical Institutes and the schools owned by the Education Corporation of America, have also included large numbers of Californians.

School closures, which leave students unable to finish the programs for which they borrowed to attend, can be disastrous for students. Schools that close tend to be ones with relatively poor reputations, so even students who are able to transfer coursework to continue their program may not be well served. Reputable schools may not accept the coursework taken at the closed school, while those that do so readily are often those with lower academic standards. As a case in point, Education Corporation of America's closure announced in December 2018 affected Californians enrolled across ten campuses of Brightwood College plus the Golf Academy of America. The only California-based transfer options ECA is promoting are at for-profit colleges.[15]

For student loan borrowers who do not transfer coursework to complete their prior program, federal law allows students affected by a school closure to have their federal student loans discharged. In 2017, the U.S. Department of Education began also restoring students' eligibility for Pell Grants.

California is one of almost two dozen states with a State Tuition Recovery Fund, or STRF, to provide an additional or alternative source of financial relief. California's program is more generous than federal relief in a few ways. Students whose particular programs close are eligible for relief under STRF, even if the school itself remains open.[16] It can help students who have private loan debt in addition to federal loans, and even help reimburse third-parties who paid tuition directly without loans. However, CA STRF only reimburses costs that were incurred to pay for tuition or other direct costs to the institution, not other non-tuition costs of college. In this way, the state's STRF program is more stringent than federal discharges. California legislators are currently exploring ways to reform state financial aid to better recognize the total cost of college, and the state may want to apply some of those lessons to the STRF program as well.

Secondly, the ways in which colleges use misleading and deceptive information to encourage students to enroll has received substantial attention in federal policy. Federal law entitles student loan borrowers who were mistreated or lied to by their college to have their federal loans discharged.[17] This provision was rarely used until the Obama Administration, in collaboration with then-California Attorney General Kamala Harris, documented widespread

[15] Education Corporation of America. Transfer Opportunities. Available at: http://www.ecacolleges.com/transfers/.
[16] Bureau for Private Postsecondary Education. Student Tuition Recovery Fund. Available at: https://www.bppe.ca.gov/lawsregs/strf.shtml.
[17] U.S. Department of Education. Forgiveness, Cancellation, and Discharge. Available at: https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation.

misrepresentations within Corinthian Colleges, with campuses known as Everest, Heald, and Wyotech. Their joint investigation found that the company had inflated graduates' likelihood of finding employment across hundreds of programs offered. For example, the Los Angeles campus of Wyotech advertised a job placement rate of 80 percent for its automotive technician certificate program, but the recalculated job placement rate after the joint investigation was just 26 percent.[18] The Ontario campus of Everest College reported that 78 percent of medical assisting certificate graduates landed jobs, whereas the recalculated rate was just 52 percent.

With over 100,000 students affected by misrepresentations, the Obama Administration developed processes that provided an expedited path towards debt relief for students who had enrolled in programs known to have been misleading students.[19] This includes students from more than 400 California-based programs.

Had more reliable, verifiable data on employment outcomes been available to overseers during the time that students were being misled, the state might have been able to identify some of the falsehoods earlier. Some but not all accrediting agencies require schools to report on graduates' employment outcomes. California does require BPPE-covered institutions to report on students' post-completion outcomes. However, data are collected by the institutions through alumni surveys, and is too-infrequently verified by any state or third-party actor.

The state's Employment Development Department (EDD) has data on employment and wages through the Unemployment Insurance program,[20] and those data are already used by the California community colleges, the California State University, and the University of California. While strides have been made to connect public college student records to state wage data in order to better understand employment outcomes, nothing other than school-reported data exist for private colleges. California could help to provide a consistent level of transparency across all schools by requiring colleges and workforce training providers to report student-level information to the Bureau, and clearing legal barriers to facilitate connecting that information to wage data in order to assess post-college performance. Doing so would make it easier for policymakers, students, and institutions to assess post-completion outcomes, and would help identify instances of fraud before they are widespread.

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[18] U.S. Department of Education. (November 17, 2015). Department of Education and Attorney General Kamala Harris Announce Findings from Investigation of Wyotech and Everest Programs. Available at: https://www.ed.gov/news/press-releases/department-education-and-attorney-general-kamala-harris-announce-findings-investigation-wyotech-and-everest-programs.

[19] *Id*. (The U.S. Department of Education's findings apply to 85,000 Everest and Wyotech students and 40,000 Heald students.)

[20] The Institute for College Access and Success. Employment Outcomes at California Colleges Improving Information for Students, Schools, and Policymakers. Available at: https://ticas.org/content/pub/employment-outcomes-california-colleges.

Finally, I want to discuss online education. Some policymakers hope that online education can help many more students earn college degrees through its geographic reach, flexible scheduling, and potential to scale. However, the challenges in assessing academic rigor and student outcomes can be even greater than in traditional programs, particularly for low-income students, and there is a long history of overpriced and poor-quality programs leaving students with debts they cannot afford to repay.[21]

The growth of online education can complicate state oversight. While states can and do regulate commerce conducted by companies headquartered out-of-state, higher education oversight has traditionally been focused on schools located inside the state, not those offering educational programs across state lines. Most Californians enrolled in online education are at California-based schools, and a California community college in particular, but about 100,000 Californians are enrolled in distance education programs offered by schools based in other states.[22] More than 40 percent of these students are enrolled in for-profit colleges or at nonprofits of questionable legitimacy. There is reason to be concerned about these students. Out-of-state institutions that enroll Californians online have worse student loan repayment outcomes than California-based distance education providers. Three years after leaving college, 30 percent of borrowers from out-of-state schools[23] enrolling Californians are paying down their debt, compared to 45 percent of student loan borrowers from California-based distance education providers. The share of borrowers who end up in default is also higher at out-of-state distance education providers than at in-state providers.[24]

Importantly, California can enact new protections for students because it has not joined the interstate reciprocity agreement that other states have. This agreement, developed and managed by the National Council for State Authorization Reciprocity Agreements, commonly known as SARA, is designed to streamline the ability of the schools within their borders to enroll students based elsewhere. However, in exchange for this streamlined process, participating states must give up their authority to apply new or existing higher education laws to schools enrolling their residents.[25] California has not joined SARA, and thus retains its ability to regulate out-of-state schools enrolling Californians. However, it has done little with this authority to date. Out-of-state for-profit colleges must register with the BPPE and pay into the state's Student Tuition Recovery Fund for each Californian enrolled, but no other California higher education law applies to these

[21] Spiros Protopsaltis and Sandy Baum. (January 2019). Does Online Education Live Up to Its Promise? A Look at the Evidence and Implications for Federal Policy. Available at: https://mason.gmu.edu/~sprotops/OnlineEd.pdf.
[22] The Institute for College Access and Success. Oversight of Out-of-state Online Colleges: California's Students Need More Protection, Not Less. Available at: https://ticas.org/sites/default/files/pub_files/nc-sara_ca.pdf.
[23] Institutions that are members of NC-SARA.
[24] The Institute for College Access and Success. Oversight of Out-of-state Online Colleges: California's Students Need More Protection, Not Less. Available at: https://ticas.org/sites/default/files/pub_files/nc-sara_ca.pdf.
[25] The Institute for College Access and Success. Strengthening Interstate Oversight of Distance Education Through Improvements to National Council for State Authorization Reciprocity Agreements (NC-SARA). Available at: https://ticas.org/sites/default/files/going_the_distance_one-pager.pdf.

schools. As the Legislature considers how best to strengthen oversight, it should consider what additional provisions are needed to protect the state's residents, irrespective of where they are enrolled.

Thank you for the opportunity to share these thoughts with you today, and I welcome any questions.