June 25, 2024

The Honorable Josh Newman
Chair, Senate Education Committee
California State Senate
State Capitol, Room 6740
Sacramento, CA 95814

RE: Oppose Unless Amended - AB 3167 (Chen)- Highly Qualified Educational Institutions

Dear Senator Josh Newman,

I am writing on behalf of The Institute for College Access & Success (TICAS) to respectfully express opposition to AB 3167, authored by Assemblyman Phillip Chen. While we appreciate certain aspects of the bill, we believe it needs significant amendments to ensure it effectively protects students and maintains the fiscal sustainability of the Bureau for Private Postsecondary Education (BPPE).

We commend the author and sponsor for their efforts on AB 3167. Specifically, that it eliminates the exemption for out-of-state nonprofit institutions and requires them to report specific changes to BPPE through registration. This is a positive step for accredited out-of-state nonprofits operating through distance education programs. We also appreciate the intent of this bill to create useful distinctions between accrediting bodies based on the institutions they accredit. However, we have several concerns and suggested amendments we hope you consider.

First, as touched upon in the Assembly Business & Professions Committee, we must consider the broader policy implications which this bill could lead California towards. This bill may inadvertently allow more out-of-state public or nonprofit institutions to perceive this new registration status as a future mechanism to lobby themselves into so that they may establish legitimacy for purposes of accessing federal financial aid, or even California’s financial aid. This is particularly concerning given the already limited financial aid available to California’s community colleges and four-year institutions. Furthermore, during times of fiscal limitations, California should not open the door to diverting state resources from in-state public institutions which serve that vast majority of student in the state.

Second, the BPPE is operating under a substantial structural deficit. According to recent reports, the Bureau’s revenue falls short of its expenditures, threatening its ability to protect consumers. The registration fee proposed by AB 3167, set at $1,500 every ten years, is insufficient to cover the increased workload for the Bureau. We recommend an annual fee of $1,500 to ensure the Bureau has adequate resources to fulfill its consumer protection mandate. An additional fiscal concern also extends to the potential increase in litigation costs for the BPPE. The bill’s current enforcement mechanisms may place the Bureau in a difficult position, forcing it to choose between costly litigation and allowing minor infractions. This situation could further strain the Bureau’s limited budget and resources.
Third, the bill should be amended to clarify that non-accredited institutions must register with the BPPE. This can be achieved by modifying section 94801.5(a)(1)(A) to read: "Evidence of institutional accreditation, if any." Without this amendment, there is a risk of misinterpretation that could exempt non-accredited institutions from necessary oversight – especially since it is not accredited.

Next, while the option for institutions to use a surety bond in lieu of contributing to the Student Tuition Recovery Fund (STRF) should only be available for qualified nonprofits, it still raises several issues. As mentioned in the Assembly Business & Profession Committee analysis, "STRF exists in California to mitigate economic loss suffered by California students," but there are statutory limitations on the utilization of STRF funds that can be supplemented by a surety bond such as the storage, maintenance, and availability of student records and compensation for faculty to remain on a temporary basis. Therefore, we recommend a surety bond supplement, not supplant STRF. To ensure that these students are protected, detailed regulations are needed to specify the terms, conditions, and approval process for these bonds. The bond amounts should be sufficient to cover potential losses and calculated based on the maximum potential school closure liability for the cohort of students enrolled at any one time. Lastly, if the Legislature allows for surety bonds to supplant STRF, we believe that schools who choose to use a bond in lieu or paying into STRF should pay additional fees to fund the Bureau’s activity to draft and establish regulations and review bonds for adequacy under the regulations.

Moreover, to prevent the rise of "shell" nonprofits, a provision should be added to limit the percentage of tuition paid by California residents to third parties. We recommend that no more than 25% of tuition be paid to a third party, ensuring financial transparency and accountability.

Lastly, AB 3167 should include reporting requirements for the BPPE to provide the Legislature with data on the implementation and impact of this new registration classification. This will help assess which institutions qualify, which do not, and the reasons behind these outcomes.

For these reasons, TICAS opposes AB 3167 unless amended to address the above concerns. While we appreciate the intent of the bill, we urge the Senate Education Committee to consider these recommendations to ensure the bill effectively protects students and maintains the fiscal health of the BPPE.

Thank you for your attention to our concerns. We are available for further discussion and to provide any additional information that may assist in your deliberations.

Sincerely,

Emmanuel Rodriguez
Director of Policy and Advocacy, California
The Institute for College Access and Success (TICAS)

cc: Members of the Senate Education Committee
    Olgalilia Ramirez, Principal Consultant Senate Education Committee