

Bureau for Private Postsecondary Education

It Has Consistently Failed to Meet Its Responsibility to Protect the Public's Interests

Report 2013-045



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March 18, 2014

2013-045

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As required by Chapter 310, Statutes of 2009, the California State Auditor (state auditor) presents this audit report concerning the effectiveness and efficiency of the Bureau for Private Postsecondary Education's (bureau) operations.

This report concludes that the bureau has consistently failed to meet its responsibility to protect the public's interests. In fact, many of the State's long-standing problems with regulating private postsecondary educational institutions still persist today, four years after the bureau was established to fill the regulatory void left by the sunset of its predecessor. For example, the bureau had more than 1,100 license applications outstanding as of June 2013, some of which had been outstanding for more than three years. In addition, the bureau has struggled to proactively identify and effectively sanction unlicensed institutions. The bureau has performed only 456 announced compliance inspections since January 1, 2010, even though state law would suggest it might be responsible for performing an average of about 500 announced inspections per year. Moreover, the bureau failed to identify violations during the announced inspections that it did perform.

The bureau also failed to appropriately respond to complaints against institutions, even when students' safety was allegedly at risk. The bureau's data indicates that it had almost 780 complaints outstanding as of October 2013, and that 546 of these had been outstanding more than 180 days. Further, the bureau did not ensure that institutions provide students with accurate information that they can use for making enrollment decisions. For example, we visited five institutions and found that each institution either had errors or could not substantiate their student performance data, including job placement rates. The bureau conducted inspections for three of the five institutions but did not identify the discrepancies we found. We also noted weaknesses in the bureau's management of the Student Tuition Recovery Fund because, as of July 2013, roughly half of the 915 claims it received from fiscal years 2008–09 through 2012–13 were still outstanding.

The bureau is currently undergoing a sunset review and will cease to exist on January 1, 2015, unless the Legislature determines that it should continue its operations. We believe the Legislature has several options it can consider when deciding how best to regulate private postsecondary education in the future, including allowing the bureau to continue in its current form with significantly more assistance and oversight from the California Department of Consumer Affairs (Consumer Affairs), reducing the bureau's responsibilities by reassigning some of them to other entities that Consumer Affairs oversees, or transferring all of the bureau's powers and duties from the director of Consumer Affairs to another state entity or entities.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Contents

Summary	1
Introduction	5
Chapter 1	
The Bureau for Private Postsecondary Education’s Oversight of the Institutions Has Failed to Protect the Public	15
Recommendations	28
Chapter 2	
The Bureau for Private Postsecondary Education Has Not Protected Students’ Interests As State Law Requires	31
Recommendations	41
Chapter 3	
The Legislature Has Options for Addressing the State’s Continuous Struggle With Regulating Private Postsecondary Education	43
Recommendations	51
Response to the Audit	
California Department of Consumer Affairs	55
California State Auditor’s Comments on the Response From the California Department of Consumer Affairs	61

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Summary

Results in brief

One of 40 regulatory entities within the California Department of Consumer Affairs (Consumer Affairs), the Bureau for Private Postsecondary Education (bureau) has been responsible for regulating private postsecondary educational institutions (institutions) in California since 2010. The long and troubled past of the entities that previously performed the same functions as the bureau have been well documented in reports by the California State Auditor and others. In fact, the problems these reports identified were so severe that a former governor vetoed a bill that would have extended the sunset date of the immediate predecessor to the bureau—the Bureau for Private and Postsecondary and Vocational Education—in 2007. Unfortunately, during our current audit of the bureau, we found that many of the problems of the past persist today, four years after the Legislature reestablished the bureau to fill the regulatory void left by the sunset of its predecessor.

The bureau is currently undergoing a sunset review and will cease to exist on January 1, 2015, unless the Legislature determines that it should continue its operations. We believe the Legislature has several options when deciding how best to regulate private postsecondary education in the future. For example, the Legislature could allow the bureau to continue in its current form but require Consumer Affairs to provide it with significantly more assistance and oversight. Alternatively, the Legislature could reduce the bureau's responsibilities by reassigning some of them to other entities that Consumer Affairs oversees. Finally, the Legislature could transfer the powers and duties set forth in the California Private Postsecondary Education Act of 2009 from the director of Consumer Affairs to another state entity or entities. What follows is a summary of our audit of the bureau and our recommendations for either the bureau or the entities that inherit any of its responsibilities.

As of July 2013, the bureau regulated 1,047 institutions. Although its statutory responsibilities include licensing institutions, conducting inspections, and investigating complaints, it has struggled to meet these and other responsibilities designed to protect the public and students. For example, the bureau had more than 1,100 license applications outstanding as of June 30, 2013. Some of these applications had been outstanding for more than three years, significantly delaying the institutions' ability to operate. Further, the bureau took an average of 185 days to process the roughly 3,200 applications it received and closed during fiscal years 2009–10 through 2012–13—three times as long as its goal of 60 days.

Audit Highlights . . .

Our audit of the Bureau for Private Postsecondary Education (bureau) revealed the following:

- » *The bureau has not met its statutory responsibility to regulate and oversee private postsecondary educational institutions (institutions).*
 - *As of June 30, 2013, it had more than 1,100 licensing applications outstanding, some for more than three years.*
 - *During fiscal years 2009–10 through 2012–13, it took an average of 185 days to process 3,200 licensing applications that it had received and closed.*
 - *It failed to identify proactively and sanction effectively unlicensed institutions.*
 - *It conducted only a fraction of the inspections of institutions required by law and failed to identify violations during these inspections.*
- » *The bureau has not protected students' interests as state law requires.*
 - *It failed to respond appropriately to complaints against institutions, even when students' safety was allegedly at risk.*
 - *It did not ensure that institutions provided students with accurate disclosures about their operations.*
 - *It can improve its management of the Student Tuition Recovery Fund.*

The bureau has also struggled to identify proactively and sanction effectively unlicensed institutions, thereby exposing the public to potential risk from institutions that operate illegally. State law requires the bureau to establish a program to identify unlicensed institutions proactively; however, as of January 2014, the bureau had not done so. Moreover, as of October 2013, it had not yet resolved roughly 160 of the 438 complaints against unlicensed institutions that it had received, 13 of which were about three years old. Further, it had issued 14 citations to unlicensed institutions with administrative fines totaling \$700,000, yet at the time of this audit, it had only collected \$5,000 from one of the institutions. We believe that state law grants the bureau broad enforcement authority and that the bureau could be more aggressive in its efforts to reduce the number of unlicensed institutions operating in the State. Until the bureau takes full advantage of the enforcement alternatives available to it, institutions are likely to continue to operate without its approval.

The bureau has further placed the public at risk because it has performed compliance inspections for far fewer institutions than state law requires and it failed to identify violations during the inspections that it did perform. For example, state law requires the bureau to perform announced inspections of each of the 1,047 institutions it currently regulates at least once every two years. This number would suggest that the bureau would perform an average of about 500 announced inspections per year. However, between January 1, 2010, and August 6, 2013, the bureau performed only 456 announced inspections. Several factors contributed to the bureau's failure to perform compliance inspections, including its delay in implementing regulations and hiring staff. Further, the bureau took an average of almost 300 days to complete the 10 inspections we selected for review, even though its goal is to complete them within 135 days. In addition, our review of the bureau's inspections found that at times it failed to identify violations of state regulations and that it did not ensure that institutions promptly resolved those violations that it did identify.

The bureau also failed to respond appropriately to complaints against institutions, even when students' safety was allegedly at risk. The bureau's data indicate that it had almost 780 complaints outstanding as of October 2013, and that 546 of these had been outstanding more than 180 days. Our analysis of 11 of the roughly 1,300 closed complaints found that the bureau took an average of 254 days to close them. The public may have suffered harm as a result of the bureau's delays in resolving some of these complaints, in part because it did not consistently prioritize complaints involving potential risk to students as its procedures require. For example, the bureau took 502 days to resolve a complaint alleging that an institution was operating as an unapproved flight school and was charging students \$30,000 for flight training that they did not receive—a complaint that

it should have identified as high priority but did not. We also found that it had closed two of the 20 complaints we reviewed without collecting sufficient evidence that the institutions had resolved the problems in question.

Further, the bureau did not ensure that institutions provide students with accurate information that they can use for making enrollment decisions. State law and regulations require institutions to compile and publish fact sheets that contain brief summaries of statistical information such as completion rates, license examination passage rates, and job placement rates for their students. Each of the five institutions we visited either had errors or could not substantiate the data they reported in their fact sheets. The bureau had conducted on-site inspections for three of these five institutions but did not identify any of the discrepancies we found.

We also noted weaknesses in the bureau's management of the Student Tuition Recovery Fund (recovery fund), which the Legislature established to provide a means of mitigating economic losses students suffer, such as when institutions close or when they fail to provide the services for which students paid. As of July 2013, the bureau had processed 442 recovery fund claims and had 473 claims outstanding. Our review of 29 claims found the bureau took an average of 290 days to process them, despite the bureau chief's stated goal of processing claims in 90 days. In addition, the bureau does not track the information necessary to allow it to identify which stages of the process have contributed to its delays. We also noticed that the bureau made errors in processing seven of these claims. Until the bureau improves its management of the recovery fund, it cannot ensure that it is adequately protecting those students who suffer losses because of institutions' actions.

Recommendations

To protect the public, the Legislature should consider other options for regulating private postsecondary education, including reducing the bureau's responsibilities or transferring them to another state entity.

To improve its licensing process, the bureau should take steps to eliminate its backlog of applications, such as reviewing and streamlining the application process and specifying a time frame for staff to complete their review.

To comply with state law, the bureau should identify proactively and sanction effectively unlicensed institutions. It also should use the enforcement mechanisms that state law provides for sanctioning unlicensed institutions.

To comply with state law and to ensure that it effectively manages its inspections of institutions, the bureau should do the following:

- Establish a schedule that maps out the anticipated inspection dates for each of the institutions it regulates and ensure that the schedule is consistent with state law.
- Track the amount of time its staff take to complete each step of its inspection process.
- Evaluate the reasonableness of the time frame it has established for completing inspections.
- Provide additional guidance to inspectors on how to identify violations.
- Monitor the status of its enforcement actions weekly to prevent delays in resolving violations.

To reduce its backlog of unresolved complaints involving institutions, the bureau needs to establish benchmarks and monitor them to ensure that staff resolve the backlog as expeditiously as possible.

To ensure that it addresses issues that pose potential risk to students, the bureau should ensure that staff follow its procedures for prioritizing complaints.

To ensure that it identifies and obtains sufficient evidence before closing complaints, the bureau should work with Consumer Affairs to establish an investigative training program.

To ensure that institutions provide prospective students with accurate data in their fact sheets, the bureau should direct its staff to review and retain the documentation supporting the fact sheets during its on-site inspections.

To process recovery fund claims in a more timely manner, the bureau should track the information it needs to identify where the delays in its process occur.

Agency Comments

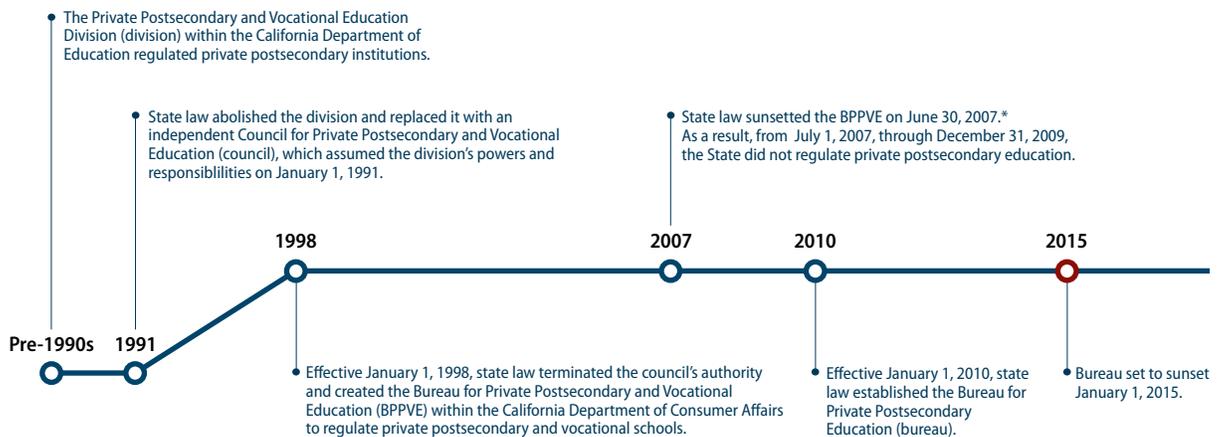
Consumer Affairs stated that, in general, it and the bureau concur with our recommendations in chapters 1 and 2. Consumer Affairs also stated it would continue to support the efforts of the bureau to implement the recommendations. However, Consumer Affairs did not believe the title of the report reflected the conditions found at the bureau.

Introduction

Background

The California Department of Consumer Affairs (Consumer Affairs) is responsible for overseeing 40 regulatory entities. Generally, these entities consist of boards, committees, and bureaus that regulate and license professional and vocational occupations to protect the health, safety, and welfare of the people of California. One of these entities is the Bureau for Private Postsecondary Education (bureau). The Private Postsecondary Education Act of 2009 (act) established the bureau effective January 1, 2010. The powers and duties set forth in the act are vested in the director of Consumer Affairs. The director delegated the responsibility for regulating private postsecondary educational institutions (institutions) in California to the bureau, including both degree-granting academic institutions and non-degree-granting institutions, such as automotive repair and cosmetology vocational schools. Figure 1 presents other state entities that performed the same or similar functions as the bureau during the preceding 25 years.

Figure 1
 Evolution of the State’s Regulation of Private Postsecondary Education



Sources: Bureau’s Web site, Assembly Floor Analysis Assembly Bill 48 (2009), California Postsecondary Education Commission, California Education Code, and California Code of Regulations.

Note: During the period from July 1, 2007, through December 31, 2009, the State did not regulate private postsecondary institutions in California. For a short time, until June 30, 2008, Consumer Affairs handled a few of the former BPPVE’s responsibilities, including processing Student Tuition Recovery Fund claims.

* Although the Legislature passed a bill to extend this date, a former governor vetoed the bill.

The bureau has a number of general responsibilities, including the following:

- Protecting the public against fraud and misrepresentation by institutions.
- Establishing and enforcing minimum standards for institutions' ethical business practices.
- Establishing and enforcing minimum educational quality standards and opportunities for success for all students.

To meet its responsibilities, the bureau has seven units, as shown in Figure 2. The State has authorized 66 positions within the bureau, including a bureau chief and deputy bureau chief. Fifteen of these authorized positions, or 23 percent, were vacant as of October 2013. The vacant 15 positions included eight positions that the State authorized in the spring of 2013 to assist the bureau's licensing unit.

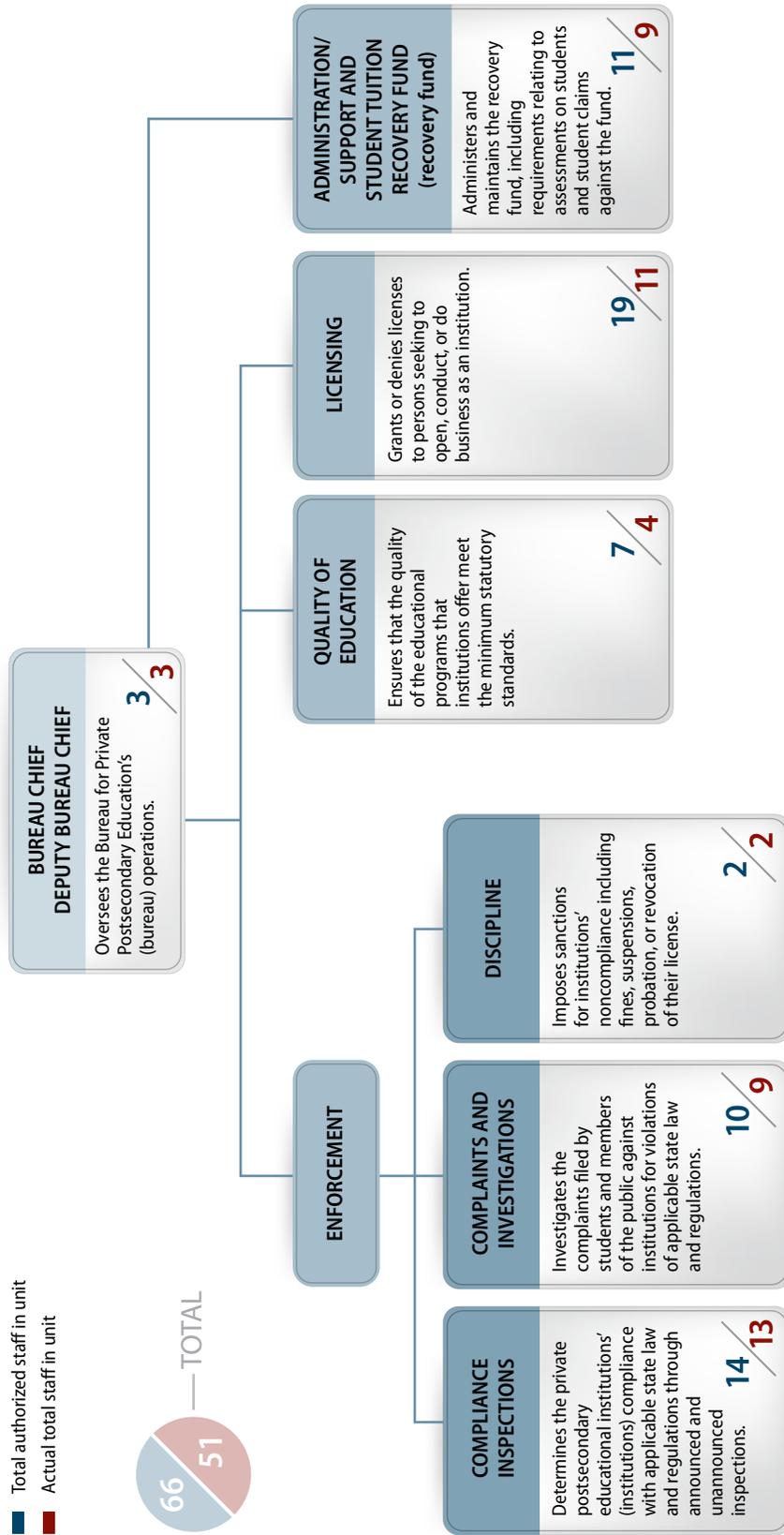
The bureau pays all of its administrative expenditures from the Private Postsecondary Education Administration Fund (administration fund), which had a balance of \$10.5 million as of June 30, 2013. The administration fund receives most of its revenue from the institutions' license renewal fees.

The Licensing Process

One of the bureau's primary responsibilities is to grant applicants licenses that permit them to operate as institutions in the State. In order to receive a license, applicants must present sufficient evidence that they have the capacity to satisfy the minimum operating standards that the act and implementing regulations require. For example, they must maintain specific written standards for student admissions for each of their educational programs; they must retain properly qualified directors, administrators, and faculty; and they must be financially sound and capable of fulfilling their commitments to students. The act requires the bureau to verify the evidence that applicants submit before it licenses them to operate.

However, the act also establishes an alternative process that allows the bureau to grant licenses to institutions that are accredited by agencies that the U.S. Department of Education recognizes. For example, the Western Association for Schools and Colleges (WASC) is one of six regional accrediting associations in the United States, and it accredits both degree-granting and non-degree-granting postsecondary institutions. State regulations require these accredited applicants to submit their applications, certified copies of their current verification of accreditation, and the appropriate application fee to the bureau.

Figure 2
The Bureau for Private Postsecondary Education's Units and Their Responsibilities as of October 2013



Sources: The bureau's organization chart, the governor's budget, and the California Code of Regulations.

As Table 1 shows, the bureau regulated 1,047 institutions as of July 22, 2013. The bureau estimates that it also regulates roughly 400 additional branch and 500 satellite campuses of the main institutions.

Table 1
The Bureau for Private Postsecondary Education's Regulation of Private Postsecondary Educational Institutions by Approval Type as of July 22, 2013

APPROVAL TYPE	NUMBER OF INSTITUTIONS
Approved by accreditation	337
Conditional approval	23
Full approval	687
Total	1,047

Source: The California State Auditor's (state auditor) analysis of data obtained from the Bureau for Private Postsecondary Education's (bureau) Schools Automated Information Link database. The state auditor did not perform an assessment of the reliability of these data.

Definitions

Approved by accreditation: The bureau approves accredited private postsecondary educational institutions (institutions) after reviewing their application and verifying their accreditation status.

Conditional approval: The bureau may grant conditional approval to institutions that submit applications that are nearly complete. These institutions can operate for a limited time while they address the minor deficiencies in their applications.

Full approval: The bureau performs a full review of these institutions before approving them, including reviewing faculty qualifications and curricula.

The act exempts several types of institutions from the bureau's oversight, including the following:

- Institutions that the federal government or the State establishes, operates, and governs.
- Institutions that certain nonprofit, religious organizations own, control, and operate.
- Institutions that do not award degrees and that solely provide educational programs for total charges of \$2,500 or less when no part of the total charges is paid from state or federal student financial aid programs.
- Institutions accredited by WASC's Accrediting Commission for Senior Colleges and Universities or its Accrediting Commission for Community and Junior Colleges.

To assist the bureau in evaluating an institution's application for a license, the act allows the bureau to empanel visiting committees. In these instances, the bureau appoints the visiting committee members, which must include educators or instructors who possess

training relevant to educational programs the institution offers, and any other person with expertise in the minimum operating standards. The visiting committee members serve at no expense to the State. The bureau may reimburse the visiting committee members for the actual travel and per diem expenses they incur during their on-site evaluation of the institutions and the bureau may seek reimbursement for those costs from the institutions being evaluated.

Compliance Inspections

The law requires the bureau to perform an equal number of announced and unannounced inspections of each institution at least every two years. The bureau's announced inspection process consists of two parts: a desk review and an on-site inspection. In the desk review, an analyst in the bureau's enforcement compliance inspections unit reviews documentation the institution submits to determine its compliance with state requirements, such as its educational programs, faculty, admissions procedures, and Web site. If the analyst finds minor violations during the desk review, the bureau sends the institution a deficiency letter. The institution has 15 days from the date of the letter to respond to the bureau.

Upon completion of the desk review, the analyst forwards the inspection file to a compliance inspector for an on-site inspection of the institution. The bureau's on-site inspection includes, among other things, a tour of the facilities, a review of student and faculty files, a review of the relevant policies and procedures, and the inspector's verification that the institution has resolved any deficiencies the bureau noted during the desk review. An inspector may detect violations of state laws and regulations during an on-site inspection. If the violations are minor, state law requires the inspector to issue a *notice to comply* (notice) before leaving the institution unless the institution corrects the violation immediately in the presence of the inspector. State law gives the institution no more than 30 days from the date of the inspection to resolve the violation. If the institution fails to comply with the notice in that time frame, the bureau must issue the institution a citation that contains either an *order of abatement*, which may require the institution to demonstrate how it will ensure compliance with the act and the regulations in the future, or an administrative fine, which cannot exceed \$5,000 for each violation.

However, if the inspector detects a more serious violation, the bureau has additional options available to it. Specifically, if the inspector identifies a material violation or finds that the institution fraudulently obtained its license, the bureau may place the institution on probation or suspend or revoke its license to operate.

The act defines a *material violation* as including, but not limited to, misrepresentation or fraud in the inducement of a contract. In addition, the act also considers it a material violation if an institution presents false or misleading claims or advertising that a student reasonably relies on when executing an enrollment agreement and that results in harm to the student.

The State's Disclosure Requirements for Private Postsecondary Educational Institutions

Enrollment agreement: An enrollment agreement is a written contract between a student and a private postsecondary educational institution (institution) concerning an educational program. It is not enforceable unless all of the following requirements are met: the student receives the institution's catalog and school performance fact sheet (fact sheet) before signing the agreement; the student acknowledges certain disclosures in the fact sheet by initialing and dating each item before signing the agreement; and the institution has a license from the Bureau for Private Postsecondary Education (bureau) to operate at the time it and the student sign the agreement.

School catalog: The institution's catalog must include information on its program, its course offerings, and its faculty and their qualifications. It must also include its institutional policies related to admissions, cancellations, withdrawals, refunds, probation, dismissal, attendance, and leave of absences. Finally, it must include a statement that it has a license from the bureau to operate; information on how a student or any member of the public may file a complaint; information on whether it participates in federal and state financial aid programs; and, if applicable, a description of the nature and extent of its job placement services.

School performance fact sheet: The institution's fact sheet must include the following information related to its educational programs, among other things: completion rates, job placement rates, license examination passage rates, and salary or wage information.

Annual report: The institution must annually report to the bureau the following information for the educational programs it offered during the reporting period: the total number of students enrolled by level of degree or for a diploma, the number of degrees by level and diplomas it awarded, the degree levels and diplomas it offered, the fact sheet, the catalog, the total charges for each educational program by period of attendance, a statement indicating whether it is current on remitting Student Tuition Recovery Fund assessments, and a statement indicating whether an accrediting agency has taken any final disciplinary action against it.

Sources: California Education Code and California Code of Regulations.

Disclosure Requirements

To ensure that students and members of the public have accurate and comprehensive information on which to base their enrollment decisions, state law requires institutions to meet several disclosure requirements. These disclosure requirements involve four key documents that we describe in the text box: the enrollment agreement, school catalog, school performance fact sheet (fact sheet), and annual report.

Before approving unaccredited institutions' applications for licenses to operate, the bureau requires its staff to review their enrollment agreements and student catalogs to determine their compliance with the requirements set forth in the act and regulations. In addition, the bureau's procedures require its staff to review fact sheets, annual reports, enrollment agreements, and catalogs during its inspections of both accredited and unaccredited institutions.

Student Tuition Recovery Fund

State law established the Student Tuition Recovery Fund (recovery fund) to relieve or mitigate losses students who attend licensed institutions suffer, such as when institutions close, fail to pay or reimburse loan proceeds under a federally guaranteed student loan program, or fail to pay judgments against them. As discussed in Chapter 2, state regulations require institutions to collect from students and remit to the bureau a small assessment that the bureau deposits into the recovery fund. Students seeking reimbursement from the recovery fund must submit claim applications and supporting documents such as their enrollment agreements; promissory notes,

if any; and receipts to the bureau. Upon receipt of a student’s claim application, bureau staff evaluate the claim application and supporting documents to determine whether to grant or deny the claim for reimbursement.

Scope and Methodology

The California Education Code requires the California State Auditor to conduct an audit of the effectiveness and efficiency of the bureau’s operations. Table 2 outlines the state law’s requirements and our methodology for addressing each requirement.

Table 2
Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
1 Evaluate the Student Tuition Recovery Fund (recovery fund), including the adequacy of its balance; the quality, timeliness, and consistency of claims processing; and the degree to which it has been or will be able to reimburse tuition for students.	<ul style="list-style-type: none"> • We reviewed the Bureau for Private Postsecondary Education Act of 2009 (act), the implementing regulations, and policies and procedures. • We interviewed the Bureau for Private Postsecondary Education’s (bureau) staff. • We reviewed a random sample of 30 recovery fund claims (20 paid, five ineligible, and five denied) to determine the quality, timeliness, and consistency of the bureau’s processing. • We examined the balance of the recovery fund for fiscal years 2008–09 through 2012–13 and the amount of outstanding claims to assess the adequacy of the balance to reimburse students. • We projected the available balance of the recovery fund from fiscal years 2013–14 through 2020–21 to assess its adequacy and to determine whether it can stay within the statutory limit of \$25 million.
2 Evaluate the bureau’s enforcement program, including: <ul style="list-style-type: none"> a. The means by which the bureau makes students and school employees aware of their ability to file complaints. 	<ul style="list-style-type: none"> • We reviewed the act, the implementing regulations, and policies and procedures. • We reviewed the bureau’s Web site and information it distributes to institutions during inspections.
<ul style="list-style-type: none"> b. The average time for investigating complaints. 	We were unsuccessful in determining the bureau’s average time for investigating all complaints because it does not track this information in the Schools Automated Information Link (SAIL) database or its Complaint Case Aging Log (complaint log). Moreover, as we describe in Table 3 on page 14, the bureau’s complaints data are unreliable. Instead, we performed the following: <ul style="list-style-type: none"> • We reviewed the act, the implementing regulations, and policies and procedures. • We interviewed bureau staff. • We selected 20 complaints filed in fiscal years 2009–10 through 2012–13 to determine the range and average time it took the bureau to investigate and close complaints.
<ul style="list-style-type: none"> c. The standards for referring complaints to investigation. 	<ul style="list-style-type: none"> • We reviewed the act, the implementing regulations, and policies and procedures. • We interviewed bureau staff.
<ul style="list-style-type: none"> d. The average time to complete investigations. 	We were unsuccessful in determining the bureau’s average time to complete all investigations because it does not track this information in SAIL or its complaint log. Moreover, as we describe in Table 3, the bureau’s complaints data are unreliable. Instead, we performed the following: <ul style="list-style-type: none"> • We reviewed the act, the implementing regulations, and policies and procedures. • We interviewed bureau staff. • We selected 20 complaints filed in fiscal years 2009–10 through 2012–13 to determine the range and average time it took the bureau to investigate and close complaints. In addition, we reviewed the priority level the bureau assigned to the complaints and the documentation that the bureau used to support its determinations.

continued on next page . . .

AUDIT OBJECTIVE	METHOD
e. The adequacy of the bureau's inspections.	<ul style="list-style-type: none"> • We reviewed the act, the implementing regulations, and policies and procedures. • We compared the policies and procedures to the relevant laws and regulations. • We interviewed bureau staff. • We selected 10 compliance inspections performed during fiscal years 2009–10 through 2012–13 to assess whether the bureau processed them adequately. Specifically, we evaluated the time the bureau took to process each phase of the inspection, whether staff completed inspection checklists, and whether the managerial reviews were adequate. • We evaluated the adequacy of the inspections to ensure compliance with the faculty minimum requirements for two of the 10 inspections. • We assessed the bureau's record of conducting announced and unannounced inspections as well as the bureau's plans for conducting them. • We reviewed the bureau's methods for tracking inspections. SAIL does not separately track inspections; thus, we relied on the bureau's compliance master list to determine the number of inspections completed.
f. The bureau's record of imposing discipline.	<ul style="list-style-type: none"> • We reviewed the act, the implementing regulations, and policies and procedures. • We interviewed bureau staff. • We selected 10 compliance inspections performed during fiscal years 2009–10 through 2012–13. We evaluated the bureau's record of issuing notices to comply before leaving the institutions and whether it adhered to the enforcement actions outlined in the act and the regulations. • We reviewed whether the bureau's enforcement actions were appropriate if it substantiated complaints. • We assessed the bureau's record of issuing citations and collecting administrative fines.
g. The bureau's record of initiating investigations based on publicly available information.	<p>We were unsuccessful in determining the bureau's record of initiating investigations based on publicly available information because the bureau does not consistently track the sources of complaints.</p>
h. The bureau's record of coordinating with law enforcement and public prosecutors.	<ul style="list-style-type: none"> • We reviewed a selection of 20 complaints filed in fiscal years 2009–10 through 2012–13. Of the 20 complaints we reviewed, the bureau coordinated with law enforcement or public prosecutors for three of them. • We reviewed the bureau's Citation Program Aging Log (citation log). Of the 39 citations listed on the citation log, the bureau coordinated with the Office of the Attorney General for seven.
i. Whether the bureau has enforcement resources necessary to protect consumers and ensure a fair and prompt resolution of complaints and investigations for both students and institutions.	<ul style="list-style-type: none"> • We reviewed the act, implementing regulations, and policies and procedures. • We interviewed bureau staff. • We reviewed the bureau's staffing requests.
3 Evaluate the bureau's efforts with respect to, and extent of institution compliance with, the public and student disclosure requirements.	<ul style="list-style-type: none"> • We reviewed the act and implementing regulations. We also reviewed the bureau's and five institutions' policies and procedures. • We interviewed bureau staff and staff at five institutions. • We examined the five institutions' catalogs, annual reports, school performance fact sheets, enrollment agreements, and Web sites for compliance with statutory disclosure requirements. We reviewed the bureau's inspections for three of the five institutions. • We evaluated the bureau's communications and outreach efforts to institutions in regards to statutory disclosure requirements.
4 Evaluate whether the bureau's staffing level and expertise are sufficient to fulfill its statutory responsibilities.	<ul style="list-style-type: none"> • We interviewed bureau staff. • We examined a selection of duty statements prepared by the bureau and compared them to the position classifications prepared by the California Department of Human Resources to see if they were consistent. • We evaluated all of the staffing requests the bureau prepared since its establishment on January 1, 2010. • We examined the bureau's use of employee and/or position transfers between units. We also reviewed any limitations placed on the bureau by other entities regarding its use of the funds approved to augment its staff. • We assessed the training the bureau offered to staff and reviewed training materials.

AUDIT OBJECTIVE	METHOD
<p>5 Evaluate any other issues that are significant to the bureau. We identified the following issues:</p> <p>a. Evaluate the bureau's licensing applications process to determine if it has adequate policies, procedures, and staff in place to effectively and efficiently process applications.</p> <p>b. The bureau's program to identify unlicensed institutions proactively.</p> <p>c. The Legislature's options for improving the regulation of private postsecondary educational institutions.</p>	<ul style="list-style-type: none"> • We reviewed the act, the implementing regulations, and policies and procedures. • We interviewed bureau staff. • We reviewed the bureau's methods for tracking applications and staff productivity. • We examined the bureau's use of visiting committees to process applications. <hr/> <ul style="list-style-type: none"> • We reviewed the act and the implementing regulations. • We interviewed bureau staff. • We reviewed the bureau's list of unlicensed institutions that was compiled upon our request. • We assessed the bureau's record of sanctioning institutions that it identifies as unlicensed. <hr/> <ul style="list-style-type: none"> • We interviewed bureau staff and the California Department of Consumer Affairs' (Consumer Affairs) staff, including the director. • We evaluated other methods that the State can use to regulate private postsecondary education.

Sources: Section 94949 of the California Education Code, and the California State Auditor's analysis of information and documentation identified in the table column titled *Method*.

In performing this audit, we obtained electronic data files extracted from the information systems listed in Table 3 on the following page. In addition to these information systems, we used ad hoc reports the bureau provided to supplement our analysis because the data from the bureau's primary data system—Schools Automated Information Link—either did not contain the information needed for our analysis or we determined that the data were not sufficiently reliable. We discuss the assessments of the reliability of these ad hoc reports in footnotes in chapters 1 and 2 of this report. The U.S. Government Accountability Office, whose standards we are statutorily required to follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support findings, conclusions, or recommendations. Table 3 shows the results of our assessments for the information systems analyzed in this report.

Table 3
Methods Used to Assess Data Reliability

INFORMATION SYSTEM	PURPOSE	METHOD AND RESULT	CONCLUSION
<p>California Department of Consumer Affairs (Consumer Affairs), Bureau for Private Postsecondary Education's (bureau) Schools Automated Information Link (SAIL)</p> <p>Data related to Student Tuition Recovery Fund (recovery fund) claims for the period July 1, 2008, through June 30, 2013</p>	<ul style="list-style-type: none"> To identify the total number of recovery fund claims paid, denied, and outstanding. To select a sample of recovery fund claims. 	<ul style="list-style-type: none"> We performed data-set verification procedures and electronic testing of key data elements and did not identify any significant issues. To test the accuracy of the SAIL data related to recovery fund claims, we traced a random selection of 40 recovery fund claim records to source documentation and verified that key data elements matched. We identified a total of five errors. Specifically, for three claims we were unable to verify the accuracy of the received date the bureau recorded in SAIL because the documentation supporting the claim did not include a stamp recording the date the bureau received the claim. Additionally, another claim showed two different date stamps on the supporting source documentation, and another claim contained a discrepancy between the date recorded in SAIL and the date stamped on the supporting source documentation. To test the completeness of the SAIL data related to recovery fund claims, we traced a haphazard selection of 32 recovery fund claims to SAIL and found no errors. 	Not sufficiently reliable for the purposes of this audit. Nevertheless, we present these data, as they represent the best available data source of this information.
<p>Bureau's SAIL database</p> <p>Data related to complaints for the period of July 1, 2009, to June 30, 2013</p>	<ul style="list-style-type: none"> To calculate the bureau's total number of complaints received and processed. To select a sample of complaints. 	<ul style="list-style-type: none"> We performed data-set verification procedures and electronic testing of key data elements and did not identify any significant issues. To test the accuracy of the SAIL data related to complaints, we initially attempted to obtain supporting documentation from the bureau for a random selection of 20 complaint records. However, the bureau could not locate the documents for three of these complaint records. In addition, the bureau made duplicate entries in SAIL in error. Specifically, we identified two complaints that were recorded in SAIL twice. Each entry contained a unique complaint number indicating that it was a unique occurrence, when in fact it was not. We did not perform completeness testing of the SAIL complaints data for the reasons stated above. 	Not sufficiently reliable for the purposes of this audit. Alternatively, we used the ad hoc report described in chapters 1 and 2.
<p>Bureau's SAIL database</p> <p>Data related to private postsecondary educational institutions' applications for licensing for the period July 1, 2009, through June 30, 2013</p>	<ul style="list-style-type: none"> To determine the number of licensing applications received and closed, and the number outstanding. To compute the average number of days it took the bureau to close licensing applications. 	We performed data-set verification procedures and electronic testing of key data elements for licensing applications, and we did not identify any significant issues.	Undetermined reliability for the purposes of this audit.
<p>California State Accounting and Reporting System</p> <p>Data related to the recovery fund for fiscal years 2008–09 through 2012–13</p>	To determine the beginning balance, ending balance, and total revenues and expenditures for the recovery fund.	To test the accuracy of the revenues, we traced a random sample of 29 recovery fund deposits to supporting documentation and found no errors. To test the accuracy of the expenditures, we traced a random sample of 20 claims paid from the recovery fund to supporting documentation and found no errors. To test completeness, we verified that balances reported by Consumer Affairs agreed to corresponding State Controller's Office documents that it used to prepare the State's Comprehensive Annual Financial Report and found that all balances agreed.	Sufficiently reliable for the purposes of the audit.

Sources: California State Auditor's review of various documents, interviews conducted, and analyses of data obtained from the bureau.

Chapter 1

THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION'S OVERSIGHT OF THE INSTITUTIONS HAS FAILED TO PROTECT THE PUBLIC

The Bureau for Private Postsecondary Education (bureau) has not met its statutory responsibility to regulate and oversee private postsecondary educational institutions (institutions). As a result, it cannot ensure that it has adequately protected the public from potential harm. For example, the bureau is responsible for licensing those institutions that wish to provide postsecondary education in the State. Yet as of June 30, 2013, the bureau had more than 1,100 applications for licenses outstanding, some of which it had received more than three years earlier. Moreover, it took an average of 185 days to process those applications that it had received and closed from fiscal years 2009–10 through 2012–13—three times as long as its goal of 60 days. The bureau also failed to identify proactively and sanction effectively unlicensed institutions. Consequently, these institutions may continue to operate illegally, potentially putting the public at risk. Finally, the bureau conducted only a fraction of the inspections of institutions that state law requires it to, and the quality of the inspections it did conduct was questionable. If it does not inspect institutions, the bureau cannot identify potential problems or issues, which is one of its primary responsibilities.

The Bureau's Significant Backlog of Licensing Applications May Delay Institutions' Ability to Operate

As discussed in the Introduction, one of the bureau's primary responsibilities is to license institutions that wish to operate in the State. However, as of June 30, 2013, the bureau's Schools Automated Information Link (SAIL) database indicated that it had 1,121 licensing applications outstanding, some of which it received as early as fiscal year 2009–10.¹ In fact, the oldest of these applications had been outstanding for 1,217 days. Table 4 on the following page shows that the bureau spent an average of 185 days to process the 3,174 applications that it received and closed from fiscal years 2009–10 through 2012–13. However, because this average does not take into account the bureau's significant backlog of applications, it does not accurately represent the bureau's processing time, which is likely longer. This is a problem because, until the bureau approves their applications, institutions seeking to provide private postsecondary educational services to students are not allowed to operate in California.

¹ We discuss the data reliability of SAIL in Table 3 on page 14 of the Introduction.

Table 4
Status and Processing Time for Licensing Applications for
Fiscal Years 2009–10 Through 2012–13

	FISCAL YEAR				AVERAGE	TOTAL
	2009–10	2010–11	2011–12	2012–13		
Number of licensing applications received and closed	422	1,044	989	719	794	3,174
Average processing time in days	287	265	125	63	185	NA
Number of licensing applications outstanding at end of fiscal year	16	142	326	637	280	1,121

Sources: The California State Auditor's analysis of data obtained from the California Department of Consumer Affairs, the Bureau for Private Postsecondary Education's Schools Automated Information Link database as of June 30, 2013.

NA = Not applicable.

The bureau's backlog may result, in part, from the fact that neither state regulations nor the bureau's own processes specify a time frame within which it must process applications. State regulations require the bureau to notify institutions in writing that their applications are either complete or incomplete within 30 days of receiving them. If an application is incomplete, the bureau must notify the institution that it needs to submit additional information or documents. If the application is complete, the bureau must either grant or deny approval, or it may grant a conditional approval allowing the institution to operate for up to six months while it corrects minor deficiencies. However, other than the initial 30-day notification, state regulations do not specify the length of time the bureau should take to complete its review of the applications. The bureau also did not include time frames in the procedures it established in March 2013 for reviewing applications for accredited and non-accredited institutions.

Although the bureau did not include time frames in its procedures, it has established goals for processing licensing applications. However, it does not appear to have taken steps toward meeting these goals. Specifically, in its 2012-2015 strategic plan, the bureau established a goal of reviewing and streamlining the application process to eliminate the backlog. It stated in its plan that by July 1, 2014, it would establish a process for a 30-day initial application review and notification of completeness, as state regulations require. It also stated in its plan that by January 1, 2015, it would perform a secondary review and respond within 60 days of receipt of a complete application. Nonetheless, according to the bureau chief, as of January 2014, the bureau did not have a formal plan for reviewing and streamlining the application process to eliminate the backlog.

Further, we question whether the bureau will achieve that goal because it lacks an effective process for tracking the status of the applications it receives. The chief of the licensing unit (licensing chief) stated that the bureau does not track the status of each application because it does not have a database with this ability. The licensing chief also stated that she has created her own tracking log to ensure that she has correctly accounted for all of the applications. However, we found that her log does not track the time bureau staff take to perform each step of the licensing process.

The bureau's lack of data makes it difficult to determine how staffing issues may contribute to its backlog. For fiscal year 2013–14, the State authorized the bureau to hire five analysts and three education specialists on a three-year, limited-term basis to assist the licensing unit with clearing the application backlog, studying the application review process, implementing improvements to reduce application processing times, and handling the continuous workload related to processing applications. However, we question whether the bureau can measure whether the addition of these new positions will result in it successfully meeting these objectives without sufficient data.

In the past the bureau has not always effectively used other assistance that was available to it in processing applications. State law gives the bureau the authority to appoint visiting committees to assist with its review of the applications. The bureau has only availed itself of this option four times since 2010. The licensing chief stated that she does not believe they would be needed for the vast majority of the applications the bureau receives. The bureau chief also stated that the committees are difficult to set up because the subject matter experts either do not want to volunteer or cannot accommodate the bureau's schedule. However, the bureau chief was unable to provide documentation of the bureau's failed attempts at establishing more visiting committees. Thus, the bureau cannot demonstrate that it is ineffective to use visiting committees to assist with processing certain applications.

The bureau believes that upcoming changes resulting from federal law will greatly increase its licensing application workload, but we question its interpretation of these changes. Specifically, beginning on July 1, 2014, federal law will require the State to authorize postsecondary educational institutions operating within California in order for those institutions to participate in programs under the Higher Education Act of 1965, including federal financial aid. The bureau believes that in response to this change, 50 to 250 institutions that state law currently exempts from licensure because of their accreditation status may choose to become licensed to ensure that their students are eligible to receive federal financial aid. However, we read the federal regulation as permitting at least some accredited educational institutions to remain exempt.

State law gives the bureau authority to appoint visiting committees to assist with its review of applications, but the bureau has not effectively used this assistance.

The bureau usually identified unlicensed institutions when it received complaints from the public or notification from staff who worked in other units or from staff who saw or heard school advertisements on television or radio.

Until the bureau makes significant strides in taking actions such as streamlining the application process, tracking critical data, and using all available resources efficiently, it is unlikely to eliminate the backlog of applications. As a result, many institutions may wait months or even years before they are able to operate.

The Bureau Has Not Effectively Identified or Sanctioned Unlicensed Institutions

Because unlicensed institutions may place the public at risk of fraud or pose a danger to its safety, state law requires the bureau to establish a program to identify these institutions proactively and take appropriate legal action. However, as of January 2014, the bureau did not have such a program. Instead, according to its enforcement manager, the bureau usually identified unlicensed institutions when it received complaints from the public or notification from staff who worked in the bureau's other units or from staff who saw or heard school advertisements on television or radio. The bureau chief stated that she was in the process of developing a program but had not yet done so because she had not found a way to identify unlicensed institutions proactively and efficiently. However, we believe that a proactive program could be as simple as dedicating one staff member to search Internet advertisements and match the institutions identified to the list of approved institutions. The bureau could also contact the California Department of Consumer Affairs (Consumer Affairs) or its other boards and bureaus to determine any best practices that it could implement.

The bureau has also failed to establish a means of tracking the unlicensed institutions it identifies. Although its April 2013 procedures stated that it had established a team of analysts to investigate complaints, tips, and referrals of potential unlicensed activity, these analysts each used their own methods to track the institutions they investigated. As a result, the bureau could not readily provide us with a comprehensive list of the unlicensed institutions it had identified. Instead, one of its enforcement analysts used the bureau's Complaint Case Aging Log to compile a list of all open and closed complaints for unlicensed institutions.² The enforcement manager stated that the bureau does not systematically track information about unlicensed institutions because the SAIL database is unable to track complaint cases. However, the bureau could use a spreadsheet to track potential

² The California State Auditor (state auditor) conducted a data reliability assessment of the bureau's Complaint Case Aging Log and found that it was not sufficiently reliable because it was missing five of the 29 closed cases we selected for review. Nevertheless, we present these data because they represent the best available data source of this information.

unlicensed activity, as long as it regularly maintains the spreadsheet to ensure its accuracy. Until the bureau tracks this information, it cannot ensure that it has taken appropriate steps to compel unlicensed institutions to cease their operations.

The bureau has also struggled to resolve the complaints that it receives regarding unlicensed institutions. The enforcement analyst sent the list—which contained 438 complaints against 336 different institutions—to the other nine analysts in October 2013 and asked them to update the status of each complaint. According to the bureau, as of October 21, 2013, it had not resolved roughly 160 of the 438 complaints on the list that it compiled in response to our request. In fact, it received 13 of these unresolved complaints in 2010 and 2011. The enforcement manager stated that inexperienced staff in part caused the bureau’s delay in processing these complaints. In order to address this issue, the enforcement manager established procedures effective November 21, 2013, that require either him or an enforcement inspection analyst to review each analyst’s five oldest cases each month and to provide instructions on how to complete the investigations.

Finally, despite its enforcement powers, the bureau has consistently failed to sanction effectively those institutions that it has identified as unlicensed. State law requires the bureau to take appropriate legal action against unlicensed institutions. To this end, state law permits the bureau to issue citations and orders of abatement to unlicensed institutions, which may require violators to cease unlawful advertising and to disconnect telephone service to any telephone number contained in the unlawful advertising. The bureau may also levy administrative fines up to \$50,000 against persons who operate institutions without a license. If the owner does not pay the administrative fine, the bureau’s July 2013 procedures require the bureau to forward the information to the California Franchise Tax Board (tax board) to recover the fines under the Interagency Intercept Collection Program, as shown in the text box.

The bureau’s Citation Program Aging Log (citation log) indicates that, since 2010, it has issued 14 citations to unlicensed institutions with administrative fines totaling \$700,000.³ However, the bureau has only collected \$5,000 from

The Bureau for Private Postsecondary Education’s Procedures for Unlicensed Institutions

If the Bureau for Private Postsecondary Education (bureau) determines a private postsecondary educational institution (institution) is operating without a license, it will:

- Send an order of abatement letter to the owner of the unlicensed institution. If the owner fails to respond to the letter within 20 days and the bureau finds that the owner is still operating, it will transfer the case to its enforcement discipline unit.
- Review the evidence, present the case to the citations program committee, and issue a citation if the committee agrees unanimously to issue a citation.
- Allow the owner 30 days to pay the administrative fine and comply with the citation or to appeal it.
- Send the owner three demand letters in 30-day intervals using certified mail if the owner does not pay the administrative fine.
- Forward the information to the California Franchise Tax Board if the owner does not respond to the three demand letters.

Sources: The bureau’s Unapproved Institutions Unlicensed Activity and Cite and Fine procedures.

³ The state auditor conducted a data reliability assessment of the bureau’s citation log and found that it was sufficiently reliable.

Until the bureau uses its enforcement powers to effectively sanction unlicensed institutions, those institutions will likely continue to operate without its authorization, potentially placing the public at risk.

one of the institutions. The bureau's citation log and other records indicate 11 of the citations were either withdrawn or referred to the Office of the Attorney General, the local district attorney's office, or Consumer Affairs' Division of Investigation. The enforcement manager stated that the bureau needs to obtain the owner's Social Security number for one of the two remaining citations and to issue demand letters for both citations before it can forward the information to the tax board. The citation analyst stated that the bureau has had little success in obtaining owners' Social Security numbers, which is information the tax board needs before it can collect the administrative fines. However, we believe state law grants the bureau broader enforcement authority in these cases, such as the ability to enforce the administrative fines it issues as money judgments, which are court orders for payment. In addition, state law grants the bureau the ability to bring an action for restitution, a temporary restraining order, the appointment of a receiver, or a preliminary or permanent injunction. Until the bureau avails itself of these additional mechanisms to effectively sanction unlicensed institutions, those institutions will likely continue to operate without licenses, potentially placing the public at risk.

The Bureau's Inspections of Institutions Have Fallen Far Short of What State Law Requires

The bureau has failed to inspect institutions as state law requires, and, as a result, it cannot ensure that it has identified problems and issues that may place the public at risk. Specifically, the bureau has only inspected a fraction of the institutions that it should have inspected to comply with state law. In addition, it failed to identify material violations of state law during the inspections that it did conduct, and it was unable to complete these inspections in a timely manner. Finally, the bureau did not adequately respond to violations that it detected during its inspections.

The Bureau Has Inspected Only a Fraction of the Institutions That It Regulates

The bureau has inspected far fewer institutions than state law requires. Specifically, state law requires the bureau to perform announced inspections of each of the institutions it regulates at least once every two years. As noted in the Introduction, as of July 22, 2013, the bureau was responsible for regulating 1,047 institutions. This number would suggest that the bureau would perform an average of about 500 announced inspections per year. Yet according to the bureau's compliance master list, it only performed 456 announced inspections between

January 1, 2010, and August 6, 2013, a period of over three years.⁴ State law also requires the bureau to perform an equal number of unannounced inspections for each two-year period; however, between January 1, 2010, and August 6, 2013, it only performed two unannounced inspections.

A number of factors contributed to the bureau's failure to perform the required inspections. First, the bureau did not implement regulations governing its compliance inspections in a timely manner. Specifically, the state law creating the bureau in January 2010 gave it until no later than January 1, 2011, to adopt regulations to ensure that it performed an equal number of announced and unannounced inspections of institutions in each two-year period and that it provided notice of the results to the students enrolled at the institutions. The bureau chief stated that the bureau did not file regulations with the Office of Administrative Law (OAL) until February 2011 and the OAL did not approve them until September 19, 2011—nine months after the deadline—and only three months before the first two-year period ended (January 1, 2010, through December 31, 2011).

In part as a consequence of this delay, the bureau had only performed eight inspections by the end of 2011. Although it is not possible to calculate the exact number of inspections it could have otherwise performed because the law does not prescribe a regular schedule for the bureau to follow beyond the two-year cycle, we believe that it should have had the necessary regulations in place to begin inspections by January 1, 2011, at the latest. We further believe that had the bureau acted quickly in implementing regulations, it could have performed more than the 458 inspections it listed as complete as of August 6, 2013. The bureau chief stated that she believes the delay in commencing inspections was attributable more to the bureau not receiving an appropriation until October 2010 and not being allowed to hire staff until August 2011 because of the State's hiring freeze than the delay in implementing regulations. We agree that the bureau would need staff to perform the inspections. However, the bureau would first need to establish the regulations so that its staff would have proper guidance on what to look for during the inspections.

In addition, the bureau does not have a schedule that maps out its anticipated announced and unannounced inspection dates for each of the institutions it regulates. Instead, the bureau's compliance master list only includes information on each institution, the

State law requires the bureau to perform an equal number of announced and unannounced inspections and inspect all institutions it regulates every two years—it only performed 456 announced and two unannounced inspections between January 1, 2010, and August 6, 2013, for the 1,047 institutions it regulates.

⁴ The state auditor conducted a data reliability assessment of the bureau's compliance master list and found that it was not sufficiently reliable because it did not contain 21 institutions that should be subject to an inspection. Nevertheless, we present these data as they represent the best available data source of this information.

The bureau failed to inspect institutions that we believe had a greater risk of noncompliance.

month and year it selected the institution for an inspection and, if applicable, the month and year it completed the inspection. The bureau chief stated that the bureau had a plan to inspect every institution at least every two years, but it put its plan on hold once it realized how long each inspection would take and the training that staff would require.

Once the bureau realized that it could not perform inspections every two years as required, we expected it would have prioritized its inspections to focus on institutions that had a higher risk of noncompliance. However, the bureau also did not establish written procedures for prioritizing high-risk inspections until July 2013. Consequently, it failed to inspect institutions that we believe had a greater risk of noncompliance. For instance, when we reviewed 20 complaints that the bureau had received, we found that eight of the complaints involved institutions that the bureau was responsible for regulating.⁵ However, the bureau had not performed announced inspections for five of these eight. Given that the complaints related to these five institutions involved allegations related to health and safety violations, false and misleading advertisements, and misrepresentation of the school's educational programs, we believe that the bureau should have prioritized their announced inspections. Instead, the bureau assigned announced inspections to institutions randomly based on the inspectors' assigned geographic areas, according to one of its managers. The bureau addressed this issue in the procedures it established in July 2013 for announced inspections, which take into consideration referrals from its licensing and complaints and investigations units of high-risk institutions. The bureau's July 2013 procedures also establish priorities for its unannounced inspections, which we determined were reasonable.

However, we question the bureau's recent decision to prioritize all private postsecondary educational institutions approved through accreditation for announced inspections. As previously mentioned, beginning July 1, 2014, federal law will require the State to authorize postsecondary institutions in order for them to participate in federal programs under the Higher Education Act of 1965, including financial aid programs. In a June 2013 letter to the U.S. Department of Education (U.S. Education), the director of Consumer Affairs stated that U.S. Education had informed the bureau that an institution approved through accreditation might not meet certain federal requirements unless the bureau inspected it. However, as previously stated, we read the federal regulation as permitting

⁵ The list indicated that 12 of the 20 complaints involved unlicensed, closed, non-jurisdictional, or exempt institutions that did not require inspections. We discuss these complaints in greater detail in Chapter 2.

at least some accredited educational institutions to remain exempt. Thus, the bureau would not need to conduct compliance inspections of these institutions.

The bureau's interpretation of the federal law may have a significant effect on its inspection workload. Specifically, the bureau chief believes that her staff may need to perform up to 537 inspections before July 1, 2014. Given that the bureau has only performed 458 inspections since its January 2010 inception, we doubt that it will be able to complete these additional inspections within the next few months. The bureau chief stated that she has not requested a legal opinion regarding the federal regulation. Before the bureau focuses its efforts on inspecting these institutions, it needs to seek official clarification from its legal counsel and the federal government regarding whether it must conduct compliance inspections on all accredited educational institutions operating in the State.

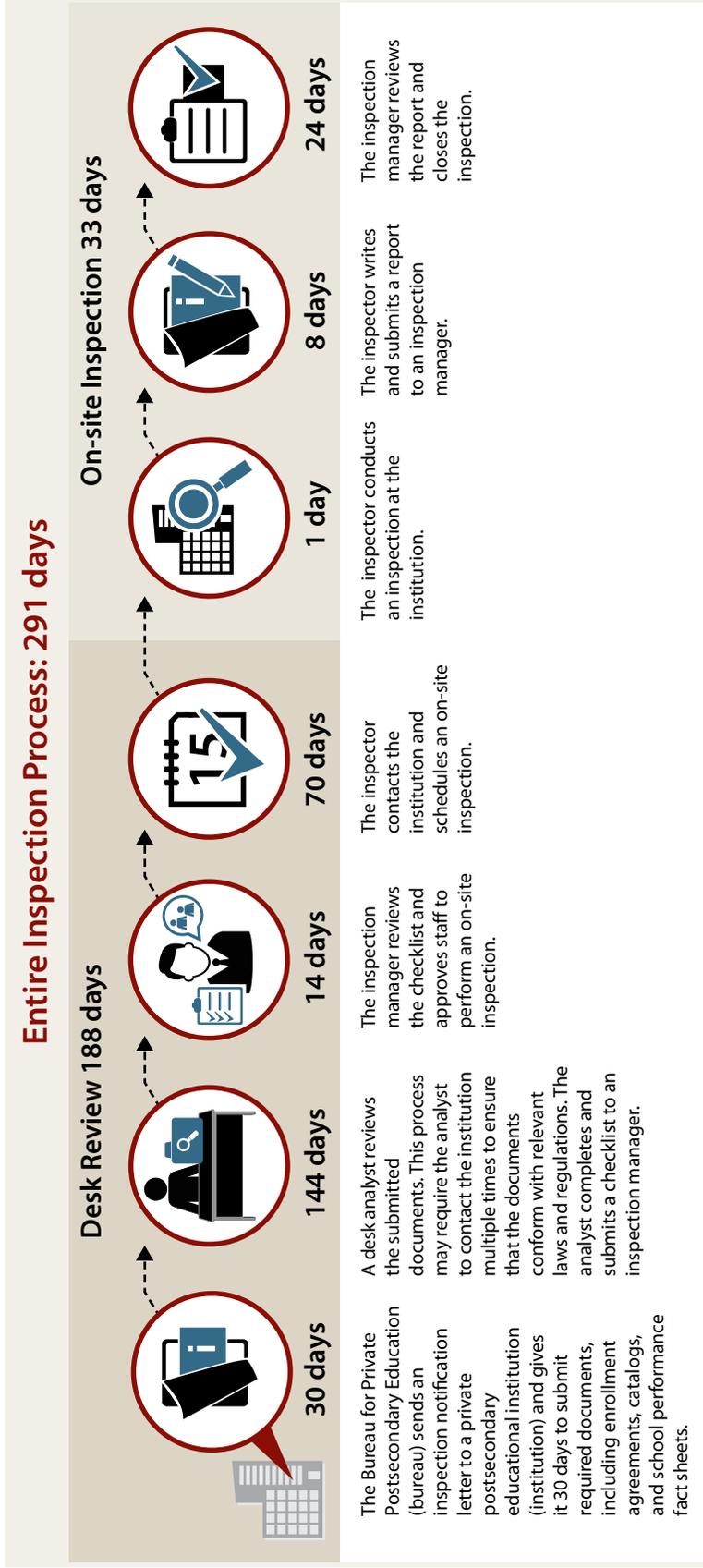
The Bureau's Process for Completing Inspections Has Been Significantly Slower Than Its Proposed Time Frame

The bureau's failure to track the amount of time it takes to perform announced inspections has further exacerbated the weaknesses in its management of the inspection process. As we discuss in the Introduction, the bureau's announced inspections consist of two parts: a desk review and an on-site inspection. The bureau's stated goal for processing each announced inspection is 135 days. It established this goal by reviewing its mandates and procedures, and by estimating how long it should take staff to complete each step of the inspection process. However, because its compliance master list does not track how long each step of the announced inspection process actually takes, the bureau has no way of knowing whether it has met its goal. Figure 3 on the following page presents our analysis of the time it took the bureau to complete the 10 announced inspections we selected for review.

Our review of the bureau's files for 10 announced inspections found that it took an average of nearly 300 days to complete them, with the lengthiest part of the process occurring during the desk reviews. This may be due, in part, to redundancies in the inspection process. Specifically, the bureau's checklists for conducting desk reviews and on-site inspections each require its staff to review the institution's enrollment agreements, catalogs, educational program information, fact sheets, and faculty and administration information. When we asked the bureau chief about these redundant reviews, she stated that when the bureau created its inspection process, it did not want to miss checking for compliance with new laws and regulations. However, she did not explain why this requires the bureau to review the same documentation more than once.

The bureau's failure to track the amount of time it takes to perform announced inspections has further exacerbated the weaknesses in its management of the inspection process.

Figure 3
The Bureau for Private Postsecondary Education's Average Time Frame for Inspecting Private Postsecondary Educational Institutions



Source: The California State Auditor's analysis of data obtained from 10 of the bureau's inspection files.

The bureau chief also stated that in October 2013 one of the bureau's managers began testing the effectiveness and efficiency of a new streamlined approach to its announced inspection process. This approach includes having the same inspector perform the desk review and the on-site inspection, with the goal of reducing the number of items the inspectors review. The bureau chief stated that she believes that the streamlined process may enable the bureau to complete an inspection within 75 days, barring any unforeseen problems. The bureau chief also stated that as of February 6, 2014, the bureau did not have sufficient data to determine if the new process will allow it to meet its mandate for completing inspections, but it would continue to monitor the process.

Finally, the bureau has not established written goals and procedures for performing unannounced inspections. As a result, it followed procedures similar to its announced inspection procedures to perform the two unannounced inspections it conducted between January 1, 2010, and August 6, 2013. The bureau chief stated that the bureau had not established unannounced inspection procedures because it shifted its resources to other priorities. The bureau chief also stated that she anticipated implementing the unannounced inspection process in November 2013, but as of January 2014 the bureau had yet to implement the procedures.

Until the bureau makes significant improvement in streamlining its inspection process and tracking how long it takes to complete inspections, it cannot ensure that it is meeting its mandate of completing the inspections on a two-year cycle.

The Bureau Has Not Consistently Identified and Responded to Violations by Institutions

Our examination of the files for 10 announced inspections found errors that suggest that the bureau's managers did not properly review the files to ensure that the inspectors had adhered to the bureau's procedures. For example, the bureau requires inspectors to complete checklists indicating whether the institutions have complied with the Private Postsecondary Education Act of 2009 (act) and its implementing regulations. However, we noted that the inspectors did not check all of the requirements shown on the checklists for six of the 10 inspections, making it impossible to know whether the inspectors addressed those issues in their inspections. When we asked the two managers about the incomplete checklists, both stated that they must have missed these errors during their reviews.

Our examination of the files for 10 announced inspections found errors that suggest the bureau's managers did not properly review the files to ensure that the inspectors had adhered to procedures.

Although the inspector reported he found no violations at two institutions, we found violations of state regulations at each.

Although the bureau's procedures detail the responsibilities of the analysts and inspectors, they do not provide specific guidance for the managers, which may explain part of the problems we found. Both managers acknowledged that their reviews of announced inspections and the manner in which they documented those reviews were inconsistent. The bureau chief stated that the managers did not receive formal training related to their positions other than the general managerial training Consumer Affairs provides. She further stated that she is working with Consumer Affairs to provide managers with additional training.

Perhaps because of their lack of formal training, the managers were unable to detect errors and inconsistencies in their inspections. We visited two of the 10 institutions whose files we reviewed—one degree-granting institution (Rudolf Steiner College) and one non-degree-granting institution (Commercial Drivers Learning Center)—to determine, among other things, whether the inspectors adequately assessed the qualifications of the institutions' faculty. Although the inspector reported he found no violations at the institutions, we found minor violations of state regulations at each. In particular, state regulations require non-degree-granting institutions to ensure that instructors maintain their knowledge by completing continuing education courses in their subject area, classroom management, or other courses related to teaching; however, Commercial Drivers Learning Center did not require its instructors to take such courses. One of the managers stated that she has performed several on-site inspections with the inspectors and acknowledged that she has never seen an inspector inquire about an institution's continuing education requirements.

The second violation we noted involved state regulations that prohibit degree-granting and non-degree-granting institutions from employing faculty found in a judicial or administrative proceeding to have violated any provision of the act and its related regulations or who have committed any act that would constitute grounds for the denial of a business or professional license, such as being convicted of a crime. The bureau's inspectors reported that the Commercial Drivers Learning Center and Rudolf Steiner College complied with this requirement. However, our review found that neither institution had a process in place to detect this type of violation; thus, we have concerns about how the inspectors reached their conclusions. The same manager stated that the bureau has struggled to determine how to ensure compliance with this particular state regulation. Currently, the inspectors ask the institutions a hypothetical question: "If you happen to discover that you have faculty or instructors who have been arrested, what would you do?" We find the inspectors' method inadequate to ensure the institutions' compliance with this state regulation.

Further, once the bureau identified violations, its enforcement actions lacked timeliness and it did not always follow its own procedures. As we discuss in the Introduction, state law requires the inspectors to issue a *notice to comply* (notice) for minor violations. The bureau issued notices to four of the 10 institutions whose inspection files we reviewed. The bureau took an average of 263 days to resolve three of the notices, in addition to the average of 297 days it took initially to complete the inspections. The bureau referred the remaining notice to its enforcement discipline unit after 391 days so that it could issue a citation: this too was in addition to the 353 days the bureau took to complete the inspection. Further, state law requires the bureau to issue a citation to the institutions if they fail to comply with the notice within 30 days. However, the bureau did not issue a citation to one of the four institutions even though the institution did not submit all of its documentation showing compliance until 40 days after the date the notice was issued.

We also found numerous other instances in which the bureau failed to ensure that institutions promptly resolved violations. Its Notice to Comply/Material Violations Log (violations log) indicates that 99 of the 160 notices it issued after it began tracking them in August 2012 were still pending as of October 2013.⁶ The bureau did not issue citations for 71 of the institutions that did not comply with these notices within 30 days. The bureau's failure to address the notices in a timely manner results in two adverse consequences. First, institutions may continue to operate without correcting the violations. Second, because the bureau lists notices on its Web site, it may identify institutions as noncompliant even though they may have already submitted documentation demonstrating they corrected the violations. For example, the bureau's Web site indicated on February 5, 2014, that one institution's notice was unresolved. Yet our review of the bureau's violations log indicates that the institution submitted its documentation in November 2012, which was within 32 days of receiving the notice.

The bureau offered several different reasons as to why it had not resolved notices more quickly. In instances in which institutions do not respond to notices within 30 days, the bureau's procedures require the inspection analyst to obtain evidence to demonstrate the institution's continued noncompliance and to submit a referral to the enforcement discipline unit. The inspection analyst stated that the bureau assigned him the responsibility to close the notices in August 2012, but he did not focus his work time entirely on this task until July 2013. Further, the inspection analyst stated that the

We found numerous instances in which the bureau failed to ensure that institutions promptly resolved violations.

⁶ The state auditor conducted a data reliability assessment of the bureau's Notice to Comply/Material Violations Log and found that it was not sufficiently reliable because it was missing one of the 29 notices we selected for review. Nevertheless, we present these data as they represent the best available data source of this information.

bureau does not have procedures that outline the steps he should take after receiving the notices from the inspectors. The bureau chief stated that the procedures were not created because the enforcement compliance inspections unit was not designed with the intent of having an individual person tasked with evaluating the institutions' responses and either closing the notices or referring them to the enforcement discipline unit. Instead, the original intent was for the managers to perform these tasks; however, the prior enforcement chief reorganized the enforcement compliance inspections unit in a manner that did not fit the original design.

Finally, before August 2012, the bureau failed to identify material violations during its on-site inspections and to ensure that institutions addressed them. These violations are the most serious and consist of actions such as misrepresentation, fraud in the inducement of a contract, and false or misleading claims or advertising upon which a student reasonably relied when executing an enrollment agreement and that resulted in harm to the student. Both of the bureau's managers stated that the bureau did not direct the inspectors until August 2012 to include material violations in their inspection reports and gather evidence to forward to the enforcement discipline unit. When questioned, one of the managers stated that the enforcement compliance inspections unit was still under development before that time. According to the manager, when inspectors began discovering more egregious violations, the bureau realized it needed to conduct a further review of its processes. However, the same manager also stated that the bureau has not yet developed policies and procedures related to identifying material violations. According to the bureau chief, the bureau did not want to provide a laundry list of material violations because the list could not be all inclusive. The bureau chief stated that she intends to explore a method of providing additional guidance to staff regarding material violations, such as actual examples. Given that material violations are those that can result in student harm, it is unclear to us why the bureau would not have taken steps sooner to provide additional guidance to its inspectors.

Recommendations

To ensure that it does not create unnecessary delays for institutions that desire to operate within the State, the bureau should do the following:

- Reduce its backlog of licensing applications by reviewing and streamlining the applications process.
- Develop a process for tracking the status of the applications it receives.

- Specify a time frame within which staff must process applications.
- Update its procedures to include the time frames for processing applications.
- Track the time its staff take to perform each step of the licensing process.
- Use available resources—such as visiting committees—to assist in processing the applications.

To comply with state law, the bureau needs to establish a proactive program to identify unlicensed institutions.

To ensure that the unlicensed institutions it identifies cease to operate, the bureau needs to use the enforcement mechanisms that state law provides for sanctioning unlicensed institutions and track all relevant information related to its enforcement actions against these institutions.

To comply with state law and to ensure that it effectively manages its inspections of institutions, the bureau should do the following:

- Establish a schedule that maps out its anticipated announced and unannounced inspection dates for each of the institutions it regulates, and ensure that the schedule is consistent with state law.
- Prioritize its announced and unannounced inspections to focus on those institutions that have a higher risk of noncompliance.
- Seek official clarification from its legal counsel and the federal government regarding whether it must conduct compliance inspections for educational institutions approved through accreditation by July 1, 2014.
- Establish a mechanism for tracking the amount of time its staff take to complete each step of its announced inspection process.
- Continue its efforts to streamline its announced inspection process in order to reduce redundancies and increase efficiency.
- Evaluate periodically the reasonableness of the time frame it established for completing announced inspections.
- Establish procedures and time frames for its unannounced inspection process.
- Establish a mechanism for tracking the amount of time it takes to complete each step of its unannounced inspection process.

- Evaluate periodically the reasonableness of the time frame it establishes for completing unannounced inspections.

To improve the quality of its inspections and related enforcement actions, the bureau should do the following:

- Establish policies, procedures, and training for managers that include guidance on how to review inspection files and how to document evidence of their reviews.
- Assign the task of resolving notices to comply to the inspection managers, as originally designed.
- Monitor the status of its enforcement actions such as notices to comply weekly so that it can prevent delays in meeting mandated deadlines.
- Provide additional guidance to the inspectors on the distinction between minor and material violations and the related actions inspectors should take in response to identifying these violations.

Chapter 2

THE BUREAU FOR PRIVATE POSTSECONDARY EDUCATION HAS NOT PROTECTED STUDENTS' INTERESTS AS STATE LAW REQUIRES

A number of the mandated responsibilities of the Bureau for Private Postsecondary Education (bureau) directly relate to protecting students' interests. However, the bureau has not shown that it is able to meet these critical responsibilities, and its failure to do so may have at times put students' safety and well-being at risk. For example, the bureau did not always appropriately respond to students' complaints against private postsecondary educational institutions (institutions). In violation of its own policies and procedures, it did not prioritize complaints alleging risk to students, and it also closed cases without sufficient evidence that institutions had resolved the issues in question. Further, although one of the bureau's primary goals is to protect consumers and students against fraud and misrepresentation, it did not ensure that regulated institutions provided current and potential students with accurate and complete disclosures about their operations. Finally, the bureau ineffectively managed the Student Tuition Recovery Fund (recovery fund), and as a result, it did not consistently provide students with the funds to which they were entitled in a timely manner.

The Bureau Has Ineffectively Handled Complaints Against Institutions, Potentially Placing Students at Risk

State law requires the bureau to establish a toll-free number staffed by one of its employees and to make available a form on its Web site to receive complaints from students and members of the public. However, the bureau at times took a year or longer to process the complaints that it received. Further, it did not prioritize complaints based on their severity so as to ensure that institutions quickly resolved the most serious violations that put students at risk. Finally, in some instances, it closed complaints prematurely, without receiving confirmation that the institutions involved had resolved the pertinent issues. To ensure the safety of students, the bureau needs to reduce its backlog of complaints, prioritize complaints involving potential risk to students, and process complaints properly.

The chief of its enforcement unit (enforcement chief) stated that the bureau's goal is to close complaints within 180 days of receiving them—although it did not have any documentation to support the development of this goal. Nevertheless, it failed to meet this goal for many complaints. The bureau's Complaint Case Aging Log (complaint log) indicates that it had almost 780 complaints

The bureau took 502 days to resolve a complaint it received alleging that an institution was operating as an unapproved flight school and was charging students \$30,000 for flight training that they did not receive.

outstanding as October 15, 2013.⁷ According to the complaint log, 546 of these complaints were backlogged because they were more than 180 days old. Further, when we reviewed 20 of the roughly 1,300 complaints that the bureau closed between July 2010 and October 2013, we found that the bureau took an average of 254 days to close 11 of them.⁸

In some of these instances, current, former, and potential students may have suffered continued harm because of the bureau's delays. For example, the bureau took 502 days to resolve a complaint it received alleging that an institution was operating as an unapproved flight school and was charging students \$30,000 for flight training that they did not receive. In addition, the complaint alleged the owner was illegally sponsoring visas for foreign students to attend the flight school. However, the bureau was unable to substantiate the allegations and closed the complaint in April 2013 after referring it to the appropriate federal authorities. When asked why it had taken the bureau so long to close this particular complaint, the enforcement chief explained that the bureau assigned it to several staff who stopped and started work on it on several occasions because of their large caseloads. The enforcement chief also stated that the bureau should have assigned this complaint a higher priority level.

This complaint was not the only one we determined the bureau failed to prioritize appropriately. The bureau's July 2013 complaint investigation procedures instruct its analysts to prioritize complaints using *urgent*, *high priority*, and *routine* categories. For example, the urgent category includes allegations that indicate an immediate danger to the public health, safety, or welfare; imminent or ongoing criminal activity; unlicensed activity posing an immediate danger to the public health, safety, or welfare; and complaints that affect people or a substantial amount of money. Before establishing these procedures, the bureau prioritized its complaints using the California Department of Consumer Affairs (Consumer Affairs) prioritization guidelines, which are similar. However, our findings suggest that the bureau often prioritized high priority complaints as routine. Specifically, our review of 20 complaints found that the bureau categorized seven of them as routine, including the complaint about the flight school, even though it should have categorized these seven as urgent or high priority. The bureau's complaint log does not capture the priority

⁷ The California State Auditor conducted a data reliability assessment of the bureau's complaint log and found that it was not sufficiently reliable because it was missing five of the 29 closed cases we selected for review. Nevertheless, we present these data because they represent the best available data source of this information.

⁸ The complaint log indicated that nine of the 20 complaints were referred to other entities and Consumer Affairs' Complaint Resolution Program or Division of Investigation.

level for each complaint. Instead, the bureau's procedures and its prior practice direct the analyst to place complaints with an assigned priority level of routine in yellow file folders. Both the bureau chief and the enforcement chief agreed that the bureau failed to categorize these seven complaints appropriately.

We also found that the bureau closed two of the 20 complaints we reviewed without collecting sufficient documentation to demonstrate that the institutions had resolved the problems in question. The bureau received a complaint from a student alleging that an institution's buildings had mold and leaking roofs. Consumer Affairs' Complaint Resolution Program (complaint program) staff recommended closing the complaint after calling a representative from the institution who asserted that it had corrected the problem. A bureau manager agreed with the recommendation, and the bureau closed the complaint. However, our review of the complaint file found no indication that staff visited the institution or collected photographs or other documentation, such as repair invoices, to verify the correction of the problem.

The bureau also received a complaint alleging that an institution had electrical equipment strung throughout the classrooms in a manner that violated the fire code. The bureau classified this allegation as falling outside of its jurisdiction, stating that the local city building department was responsible for addressing fire code violations. However, state regulations require the bureau to ensure that the institutions adequately maintain their buildings and authorize it to request permits relating to the health and safety of the institutions' facilities and equipment. We believe that the bureau had a duty to investigate this complaint and should have required the institution to provide proof that it had passed any applicable inspections.

Although the bureau requires its staff to attend various trainings, we believe the bureau can improve its evidence-gathering techniques by offering its staff additional training. The enforcement chief stated that the bureau requires its staff to go through training programs at Consumer Affairs' enforcement academy, the National Certification for Investigations and Inspectors, and the Office of the Attorney General to help them identify when they have sufficient evidence to close complaints. The bureau chief stated that she is currently working with Consumer Affairs to establish an investigative training program for the bureau's staff who process complaints.

Finally, our review also found that Consumer Affairs' complaint program and Division of Investigation helped the bureau process six of the 20 complaints we reviewed and that the bureau was generally able to resolve these complaints more quickly than it usually resolved

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Changes in federal law will likely increase the bureau's complaint workload, which may make the bureau's task of reducing its backlog even more difficult.

complaints it handled on its own. The enforcement chief stated that the bureau did not start tracking the dates it sent the complaints to Consumer Affairs until March 2011. The bureau's complaint log did not have the dates when it received four complaints back from Consumer Affairs. However, the complaint log indicates that it took complaint program staff an average of 124 days to process two of the complaints before returning them to the bureau. According to the director of Consumer Affairs, the complaint program staff assisted the bureau in reducing its backlog by temporarily assuming some responsibilities for processing the bureau's complaints. The bureau chief stated that more staff would help the bureau resolve its complaints more quickly as well as provide it with the ability to prioritize complaints better. In particular, the bureau chief stated that the bureau needed more field investigators to investigate many of the older complaints. For fiscal year 2014–15, the bureau requested 11 three-year, limited-term positions to help clear its backlog of complaints and handle the continuous workload related to processing and investigating complaints.

However, changes in federal requirements will likely increase the bureau's complaint workload, which may make the bureau's task of reducing its backlog even more difficult. In Chapter 1 we discuss the fact that by July 2014 federal law will require states to authorize postsecondary educational institutions in order for those institutions to participate in federal financial aid and other programs under the Higher Education Act of 1965. The law requires that most institutions be subject to a state process to handle student complaints. The bureau chief believes that this law will increase the bureau's workload for processing complaints; however, given that the bureau cannot manage its current workload effectively, we have concerns that it will be able to manage any additional complaints. We therefore believe that the State will struggle to provide the level of consumer protection the federal government is seeking.

The Bureau Has Not Ensured That Institutions Provide Students With Accurate Information

The bureau has not ensured that institutions comply with certain mandated disclosure requirements. Disclosure requirements are important because they ensure that students and prospective students have accurate information with which to evaluate the value and quality of the education that institutions offer. As noted in the Introduction, state law requires institutions to make disclosures in four key documents: their enrollment agreements, school catalogs, school performance fact sheets (fact sheets), and annual reports. However, the bureau did not adopt procedures for its inspection staff to ensure that institutions disclosed their fact sheets and annual reports in compliance with state law until July 2012, nor has

it consistently followed these procedures since their adoption. In addition, the bureau failed to provide adequate guidance to institutions on how to prepare their facts sheets and annual reports accurately.

According to the bureau chief, the bureau's delay in adopting procedures for reviewing the institutions' annual reports and fact sheets was the result of other delays in the establishment of its compliance program. Specifically, state law gave the bureau until January 1, 2011, to prescribe the annual report's format and method of delivery, and to establish a uniform method for institutions to obtain statistically accurate, valid, current, and representative data. However, according to the bureau chief, the bureau did not file regulations instructing institutions on how to report uniform data for their annual reports and fact sheets with the Office of Administrative Law (OAL) until February 2011 and the OAL did not approve them until September 19, 2011. The bureau chief told us that both the bureau and the institutions were confused about the requirements for the fact sheet until the bureau established the required regulations. The bureau's implementation of regulations a full nine months after the statutory deadline resulted in an unacceptable delay in the implementation of its compliance program. Further, the bureau did not adopt its procedures for reviewing the institutions' annual reports and fact sheets until nearly 10 months after it had implemented the regulations related to these documents.

Even after adopting the procedures, the bureau failed to adequately ensure that institutions complied with the State's disclosure requirements. The bureau's prior procedures directed staff to review the institutions' fact sheets for compliance with applicable laws and regulations. For example, they required enforcement compliance inspections unit staff to verify certain information from the fact sheet during their desk reviews and other information during their on-site inspections. The bureau's current procedures direct its compliance inspectors to review the information obtained from the desk inspection before their on-site inspection so that they are familiar with the institution's fact sheet. The current procedures also require the inspectors to ensure that the institutions maintain the supporting documentation for the fact sheet. However, when we asked the bureau's enforcement compliance inspections unit manager to provide us with an example of an inspection report in which an inspector verified the documentation supporting the fact sheet, she was unable to do so. The manager also stated the inspectors do not make copies of the data they review.

Further, when we visited five institutions, we found that they either had errors or could not substantiate the data they reported in their fact sheets—errors that in some instances could mislead potential

For five institutions, we found they either had errors or could not substantiate the data reported in their fact sheets—errors that could mislead potential students.

Even though the bureau had inspected three of the five institutions we visited, it did not identify any of the errors we found in their fact sheets.

students about the level of success related to the educational programs the institutions offered. In one example, California International Business University (university) published a 100 percent job placement rate for graduates of its Master of Science in International Management program. According to its vice president, the university calculated its job placement rate by following the guidelines of its accrediting agency, which counts international students who moved back to their home countries after graduation as employed. However, state law requires institutions to calculate their job placement rates by dividing the number of their graduates employed in the field by the number of graduates available for employment. State law specifically identifies international students who leave the country after graduating as unavailable for employment.

Even though the bureau had inspected three of the five institutions we visited, it did not identify any of the errors we found in their fact sheets. When we asked the bureau's enforcement compliance inspections unit manager to explain why the bureau's inspections did not identify the errors we noted, she stated that she had reviewed two of the inspection files and a manager who no longer works for the bureau had reviewed the third. The manager stated that she discontinued her review of one of the two inspections for which she was responsible because the file contained so many errors and she believed she could not reopen the inspection. The manager acknowledged that she should have identified the errors in the other inspection.

Until the bureau ensures that enforcement compliance inspections unit staff adequately verify the data reported in the institutions' annual reports and fact sheets, prospective students cannot rely on the information reported in these documents. In fact, the bureau's lack of oversight could create an opportunity for institutions to mislead students. In October 2013 the Office of the Attorney General filed a lawsuit against Corinthian Colleges Incorporated (Corinthian) and its subsidiaries that operate Heald, Everest, and Wyotech schools. The lawsuit alleges that Corinthian violated state law by, among other things, misrepresenting job placement rates to students. To ensure that the bureau better meets its state-mandated responsibility, the bureau chief stated that she is considering hiring one employee whose sole responsibility would be verifying the data in the institutions' annual reports and fact sheets. The bureau chief also stated that additional training for the enforcement compliance inspections unit is under development.

Finally, the bureau has failed to provide adequate guidance to institutions related to disclosure requirements. State law includes instructions for how institutions must calculate the data they present in their annual reports and fact sheets. Nonetheless, four of the institutions we visited did not have formal policies

and procedures they follow to ensure their compliance with the disclosure requirements; instead, they often depend on the bureau's guidance. For example, the director of the Fair Oaks Massage Institute stated she relies on the bureau's Web site, e-mail updates, and conferences for relevant information related to the State's disclosure requirements. However, since 2010, the bureau has provided institutions with only one notice related to the disclosure requirements for the fact sheet, catalog, and enrollment agreement.

By increasing its outreach and guidance to institutions, the bureau could assist them in complying with the disclosure requirements. The bureau chief agreed that the bureau could do more to educate institutions on their responsibilities and stated that she has already taken steps to provide them with additional guidance. For example, according to the bureau, it posted an instruction video to its Web site in November 2013 that provided guidance to institutions on how to create a catalog that is compliant with statutory disclosure requirements. In the future, the bureau plans to provide more guidance on the fact sheets and enrollment agreements as well.

The Bureau's Weak Management of the Student Tuition Recovery Fund Has Impeded Its Ability to Process Claims Quickly and Accurately

As discussed in the Introduction, the State established the recovery fund to protect students from specified losses, such as when institutions close unexpectedly or are unable to provide the education for which the students paid because of other specified circumstances. However, we found some instances in which the bureau either did not ensure that it paid students from the recovery fund in a timely manner or did not pay students the correct amount of money. In addition, under the bureau's management, the available balance in the recovery fund has recently exceeded its statutory limit of \$25 million and we project that it will do so indefinitely at the current recovery fund assessment amount it charges students. Finally, the bureau did not establish an effective process to monitor whether the institutions submitted the assessments they collected from students to the recovery fund. Until it improves its oversight of the recovery fund, the bureau cannot ensure that it is adequately protecting those students who suffer losses because of the institutions' actions.

The bureau's Schools Automated Information Link (SAIL) database indicates that the bureau did not process students' claims in a timely manner. Specifically, Table 5 on the following page shows that the bureau processed 442 claims from fiscal years 2008–09 through 2012–13. However, it also had 473 claims outstanding as of June 30, 2013.

The bureau cannot ensure that it is adequately protecting those students who suffer losses because of the institutions' actions until it improves its oversight of the recovery fund.

Table 5
Status of Student Tuition Recovery Fund Claims Processed From
Fiscal Years 2008–09 Through 2012–13

CLAIM TYPE	NUMBER OF CLAIMS RECEIVED BY FISCAL YEAR					TOTAL
	2008–09	2009–10	2010–11	2011–12	2012–13	
Paid	2	1	16	190	33	242
Denied*	4	10	28	125	33	200
Total claims closed	6	11	44	315	66	442
Outstanding	0	1	2	194	276	473
Total claims filed	6	12	46	509	342	915

Sources: The California State Auditor’s analysis of data obtained from the California Department of Consumer Affairs (Consumer Affairs), the Bureau for Private Postsecondary Education’s (bureau) Schools Automated Information Link database as of June 30, 2013. We determined these data were not sufficiently reliable for the purposes described in Table 3 on page 14 of the Introduction. However, we present these data as they represent the best available source of the data.

Note: During the period from July 1, 2007, through December 31, 2009, the State did not regulate private postsecondary educational institutions in California. For a short time, until June 30, 2008, Consumer Affairs handled a few of the former Bureau for Private Postsecondary and Vocational Education’s responsibilities, including processing Student Tuition Recovery Fund claims.

* *Denied* claims include claims the bureau denied, deemed ineligible, or closed without issuing payments to the claimants.

Although the bureau’s procedures specify that it will perform an initial review of recovery fund claims within 30 days of receiving them, it has not established any other formal goals for processing the claims. Nonetheless, its average processing time has seriously outpaced the bureau chief’s stated goal. Specifically, according to the bureau chief, her goal is to process recovery fund claims and issue checks to the students within 90 days. However, our review of 30 claims found that it took the bureau an average of 290 days to process 29 of them.⁹ The bureau lacks the information necessary to identify which stages of the process are contributing to the delay. According to the bureau’s recovery fund manager, the bureau does not track the amount of time its staff take to process the claims or the amount of time the students take to provide the bureau with the documents necessary to process their claims because SAIL tracks when a letter is sent to a student, but it does not allow input of when information is received from a student.

We also found that the bureau incorrectly processed seven of the 30 claims we reviewed, resulting in a roughly \$2,400 overpayment. Two analysts were responsible for the overpayments primarily because they failed to deduct registration fees and recovery fund assessments from the students’ claims. The recovery fund manager

⁹ We were unable to calculate the time it took the bureau to process one of the 30 claims because it was missing the date the bureau received it.

stated that as of January 2014, the bureau reexamined the claims we identified and is taking steps to resolve them. She also stated that the bureau has changed its procedure to ensure that the process reflects the overpayment issue and that she met with staff to ensure that these types of errors would not occur in the future.

The bureau also allowed the available balance in the recovery fund to exceed its statutory limit, suggesting that the assessment it charges students may have been unnecessarily high. Although state law prohibits the recovery fund from exceeding \$25 million, Table 6 on the following page indicates that the bureau allowed the available balance in the recovery fund to exceed that amount beginning in fiscal year 2012–13. Before January 1, 2013, state regulations set the recovery fund assessment at \$2.50 per every \$1,000 of institutional charges for each student in an educational program who is a California resident or is enrolled in a residency program. Through the bureau's efforts, state regulations were amended to lower the assessment to 50 cents per every \$1,000 of institutional charges effective January 1, 2013. However, Table 6 shows that the available balance in the recovery fund will never fall below the statutory limit if the bureau maintains the assessment at 50 cents per \$1,000 of institutional charges and the fund's revenues and expenditures remain similar to the average for fiscal years 2008–09 through 2012–13. In fact, even if the bureau were to reduce the assessment to zero, the recovery fund would not likely fall below the statutory limit until fiscal year 2020–21. Finally, SAIL indicates that there were \$1.4 million in claims outstanding as of December 31, 2013.¹⁰ The bureau has more than enough funds to pay for these outstanding claims. The bureau chief stated that the bureau is considering regulatory changes to address the collection of student assessments.

We are also concerned that the bureau does not have a process in place to ensure that institutions forward the assessments they collect from students to it for deposit. State regulations require approved institutions to submit assessments and appropriate assessment forms to the bureau every quarter. However, although the bureau established procedures for the recovery fund in April 2013 that focus on processing student claims, it has not established procedures to track whether institutions actually forward the assessments they collect from their students to the bureau, and the system it currently uses is insufficient. As a result, it does not know whether institutions remit their assessments each quarter. For example, in February 2012 the bureau ordered the Institute of Medical Education (IME) to cease its operations because of a number of violations. In addition, according to the bureau chief, the bureau found that IME claimed it had collected

Although the bureau established procedures for the recovery fund that focus on processing student claims, it has not established procedures to track whether institutions forward the assessments they collect from their students to the bureau.

¹⁰ We discuss the data reliability of SAIL in Table 3 on page 14 of the Introduction.

Table 6
Projected Student Tuition Recovery Fund Balance
Fiscal Years 2008–09 Through 2019–20
(Dollars in Thousands)

	ACTUALS					BASELINE*	PROJECTED					
	2008–09	2009–10	2010–11	2011–12	2012–13	2013–14	2014–15	2015–16	2016–17	2017–18	2018–19	2019–20
Beginning balance	\$823	\$842	\$2,103	\$11,937	\$22,238	\$28,365	\$33,689	\$39,012	\$44,335	\$49,658	\$54,981	\$60,304
Total revenues [†]	18	1,261	9,898	10,524	7,225	5,785	5,785	5,785	5,785	5,785	5,785	5,785
Total expenditures [‡]	-	-	64	223	1,098	462	462	462	462	462	462	462
Ending fund balance	\$842	\$2,103	\$11,937	\$22,238	\$28,365	\$33,689	\$39,012	\$44,335	\$49,658	\$54,981	\$60,304	\$65,627
Percent increase per year	-	149.76%	467.62%	86.29%	27.55%	18.77%	15.80%	13.64%	12.01%	10.72%	9.68%	8.83%

Source: California State Auditor's (state auditor) analysis of financial information obtained from the California Department of Consumer Affairs (Consumer Affairs). Please refer to Table 3 on page 14 of the Introduction for the state auditor's assessment of the reliability of these data.

Note: During the period from July 1, 2007, through December 31, 2009, the State did not regulate private postsecondary educational institutions (institutions) in California. For a short time, until June 2008, Consumer Affairs handled a few of the former Bureau for Private Postsecondary and Vocational Education's responsibilities, including processing Student Tuition Recovery Fund (recovery fund) claims.

* Projections assume that revenues and expenditures will remain constant. Baseline revenue and expenditure projections based on an average of actual revenues and expenditures from fiscal years 2008–09 through 2012–13.

† Total revenues represent primarily recovery fund assessments paid by students enrolled in institutions.

‡ Total expenditures represent only payments for approved claims.

no money from its students on the assessment forms it sent to the bureau. However, according to the bureau chief, IME had in fact collected the students' assessment. The bureau chief stated that the bureau ultimately paid \$594,000 from the recovery fund to eligible students who filed recovery fund claims as a result of IME's closure. The bureau subsequently filed an accusation against IME for its failure to remit assessments to the bureau, among other things.

The bureau chief stated that the bureau has not established procedures for its staff to monitor the institutions' remittance of the assessments they collect from the students because the inspectors review the recovery fund assessments during their inspections and an additional check would be redundant if the institutions underwent regular compliance inspections. We agree that this process would be redundant if the bureau was performing regular compliance inspections; however, as discussed in Chapter 1, the bureau has performed far fewer inspections than state law requires. In addition, the recovery fund manager stated that although SAIL allows staff to record the payments it receives, it does not enable them to track which institutions have not paid for all of the quarters of a calendar year. Given that the available balance in the recovery fund has exceeded the statutory limit, tracking the institutions'

remittance of assessments may not seem critical. However, if the bureau does not monitor them, it risks institutions collecting assessments from students but failing to submit those funds for their intended purpose.

Recommendations

To reduce its backlog of unresolved complaints involving institutions, the bureau needs to establish benchmarks and monitor them to ensure that the additional staff it requested and Consumer Affairs' complaint program staff resolve the backlog as expeditiously as possible.

To ensure that it closes complaints in a timely manner, the bureau should do the following:

- Analyze its process and establish a reasonable time frame for resolving them.
- Modify its policies and procedures to include the established time frame.
- Ensure that its staff adhere to the established time frame.

To address issues that pose the most serious potential risk to students, the bureau should ensure that staff follow its policies and procedures for prioritizing complaints and identify the urgent and high priority cases on the complaint log. In addition, the bureau needs to establish a process for reviewing its staff's determination of the priority of complaints and for tracking the priority levels.

To ensure that staff identify and obtain sufficient evidence before closing complaints, the bureau should continue to work with Consumer Affairs to establish an investigative training program.

To ensure that institutions provide prospective students with accurate data in their fact sheets and annual reports, the bureau should immediately take the following actions:

- Direct its staff to review and retain documentation supporting the fact sheets during on-site inspections.
- Train its staff how to calculate correctly the uniform data the institutions are to report in their annual reports and fact sheets in accordance with state law and regulations.

- Improve its outreach and education efforts to institutions to ensure that the institutions comply with all applicable disclosure requirements.

To process recovery fund claims within its 90-day goal, the bureau needs to track the information that will allow it to identify which steps in the process result in delays. When it identifies the delays in the process, the bureau should take steps to address them.

To reduce the available balance in the recovery fund below the statutory limit of \$25 million, the bureau should continue its plans to address the collection of the recovery fund assessment.

The bureau should implement and enforce policies, procedures, and sanctions to ensure that institutions submit to the bureau the recovery fund assessments that they collect from students so that the institutions are not unjustly enriched.

Chapter 3

THE LEGISLATURE HAS OPTIONS FOR ADDRESSING THE STATE'S CONTINUOUS STRUGGLE WITH REGULATING PRIVATE POSTSECONDARY EDUCATION

Four years after the Legislature reestablished the Bureau for Private Postsecondary Education (bureau), many of the State's long-standing problems with regulating private postsecondary educational institutions (institutions) persist, leading us to question whether the bureau will be able to address the deficiencies we identify in this report. To address these ongoing issues, we believe that the Legislature may want to consider the following options for regulating private postsecondary education:

- Continue the bureau in its current form but increase the level of oversight it receives from the California Department of Consumer Affairs (Consumer Affairs) and the Legislature.
- Reduce the bureau's responsibilities by reassigning some of them to other entities in Consumer Affairs.
- Transfer the powers and duties set forth in the California Private Postsecondary Education Act of 2009 (act) from the director of Consumer Affairs to another state entity or entities.

Regardless of the option or options the Legislature chooses, the State needs to improve its ability to protect the public through effective regulation of institutions.

The State Has Consistently Struggled to Regulate These Institutions Effectively

A number of reports have documented the long and troubled past of the predecessor entities of the bureau. Specifically, in our November 2000 report number 2000-111 titled *Department of Consumer Affairs: Lengthy Delays and Poor Monitoring Weaken Consumer Protection*, we concluded that the Bureau for Private Postsecondary and Vocational Education (BPPVE) had failed to issue and renew licenses in a timely manner, taking an average of 396 and 525 days to issue licenses to non-degree and degree-granting institutions, respectively. We also found that the BPPVE had not established timelines for processing complaints, nor had it monitored its complaint-processing activities.

Similarly, when Consumer Affairs retained an enforcement monitor to, among other things, review the BPPVE's operations in 2005 as part of BPPVE's sunset review process, the monitor

identified significant, ongoing deficiencies. The monitor's report concluded that nearly all of the problems that existed in the 1990s, when the Council for Private Postsecondary and Vocational Education (council) regulated the institutions, still existed and were exacerbated by the transfer of the regulatory responsibility from the council to BPPVE in 1998. Specifically, the BPPVE had been unable to eliminate the backlogs it inherited from the council, and in fact these backlogs had increased during its first year of operations. Among the areas that the monitor's report identified as needing improvement were the BPPVE's handling of licensing applications for new institutions, its enforcement actions for unapproved institutions, its processing of Student Tuition Recovery Fund (recovery fund) assessments and claims, its performance of the regular and unannounced compliance inspections, its organization and staffing, and its ability to track data through its management information and fiscal systems.

Nearly 14 years after our November 2000 audit and nine years after the monitor's report, we find history repeating itself: The bureau is still not fulfilling its mandate of protecting the public. As we discuss in Chapter 1, it has a significant backlog of licensing applications to process, has performed only a fraction of the inspections that state law requires, and has not been proactive in identifying and sanctioning institutions operating in the State without a license. As we discuss in Chapter 2, it has a backlog of complaints to investigate, has not prioritized complaints that put students at risk, has not ensured that institutions accurately disclose necessary information, and has failed to process recovery fund claims in a timely manner.

We believe that the State's ongoing struggle to regulate these institutions effectively may be due, in part, to Consumer Affairs' failure to take a more proactive role in helping the bureau meet its responsibilities. State law vests the powers and duties set forth in the act in the director of Consumer Affairs (director), although it allows the director to delegate those powers to a bureau chief. Thus, Consumer Affairs is ultimately responsible for the regulation of the institutions. However, despite the results of the 2000 and 2005 reports and the similar findings Consumer Affairs itself identified in a 2002 internal review, Consumer Affairs did not use this prior knowledge to ensure that the bureau is successful in fulfilling the mandated responsibilities delegated to it.

Consumer Affairs might have helped the bureau by ensuring that it had the data necessary to measure its performance and to determine whether it had sufficient staff to fulfill its responsibilities.

Consumer Affairs might have helped the bureau by ensuring that it had the data necessary to measure its performance and to determine whether it had sufficient staff to fulfill its responsibilities. In both chapters of this report, we discuss instances in which the bureau did not have sufficient information to monitor its activities in order to determine how to improve its performance.

For example, the bureau does not track the status of licensing applications it receives from the institutions, nor does it track the amount of time it takes to complete announced inspections. In each of these instances, bureau staff attributed their failure to track this information to limitations in the bureau's primary data management system, the Schools Automated Information Link (SAIL) database. In Table 3 on page 14 in the Introduction, we describe some of the problems we encountered with the database during this audit.

According to the bureau chief, SAIL was created for the BPPVE, but it is now outdated and does not serve the bureau's needs. The bureau chief also stated that when the bureau asked Consumer Affairs to review SAIL, Consumer Affairs explained that its existing systems could not accommodate the bureau's needs and that it would move SAIL to another server in order to stabilize the hardware and allow the bureau to work with SAIL as much as possible until the bureau's conversion to Consumer Affairs' new data management system, BreEZe. The chief of Consumer Affairs' enterprise project services section stated that the bureau's conversion to this system is tentatively scheduled for December 2015. We asked the director if Consumer Affairs could move the bureau's scheduled BreEZe implementation date to an earlier date. The director stated that it cannot do so because it negotiated the schedule with an outside vendor and changing the date might significantly increase the project's costs. However, the bureau chief acknowledged that the bureau has not taken steps to improve SAIL in the meantime and is instead relying on ad hoc reports, seven of which we identified in our review. We discuss some of these ad hoc reports in chapters 1 and 2. Because of the bureau's decision not to maintain SAIL and to use multiple ad hoc reports, we question its ability to ensure the integrity of the data it eventually transfers to BreEZe.

The chief of Consumer Affairs' enterprise project services section stated that a complete assessment of the bureau's data needs will take place in spring of 2015. In the interim, the director of Consumer Affairs stated that Consumer Affairs may be able to provide the bureau with staff to perform business process analyses, which may assist the bureau in determining its data needs and identifying solutions to address its deficiencies. We believe that had the director provided additional resources to assist the bureau in performing these analyses when the Legislature initially established the bureau, some of the deficiencies we cite in this report might not exist. For example, in many instances, the bureau did not establish operational procedures for its staff to follow until 2013. Its failure to develop such procedures in a timely manner likely contributed to its current backlogs.

A lack of adequate staffing is another factor that may have contributed to the bureau's current deficiencies.

A lack of adequate staffing in general is another factor that may well have contributed to the bureau's current deficiencies. In establishing the bureau, Consumer Affairs based its fiscal year 2010–11 staffing request primarily on the BPPVE's workload analyses and practices. In subsequent years, Consumer Affairs did not direct the bureau to conduct a workload analysis for all of its operations so that it could have an accurate depiction of the bureau's staffing needs. We believe that had Consumer Affairs directed the bureau to perform this analysis a year or two after its establishment, the bureau might have had enough staff to prevent its current backlog in processing licensing applications and complaints.

In recent years, the bureau has seen increases in its staffing numbers. For fiscal year 2013–14, Consumer Affairs approved the bureau's request for eight limited-term positions to assist with clearing its licensing application backlog, studying the application review process, implementing improvements to reduce the application processing times, and handling the continuous workload related to processing applications. Consumer Affairs also approved the bureau's request for a limited-term position to determine the appropriate measures to define the term *gainfully employed* in the state law definition of "graduates employed in the field." For fiscal year 2014–15, Consumer Affairs approved the bureau's request for 11 three-year, limited-term positions to assist with clearing its backlog of complaints and handling the continuous workload related to processing and investigating complaints. However, the effect of these additional positions on the bureau's current deficiencies remains to be seen. Further, the bureau has yet to conduct a workload analysis for all of its operations.

We asked the director to provide Consumer Affairs' perspective on why it did not initially take a more proactive role in helping the bureau meet its responsibilities. The director stated that it would not have been practical for Consumer Affairs to conduct a business process analysis for the bureau in 2010 for the following reasons:

- **Staffing:** Although the bureau was reconstituted in January 2010, it was done without any authority to hire staff. Five former staff of the BPPVE were absorbed by Consumer Affairs. Upon reconstitution, these staff had the responsibility of creating emergency regulations and working on core functions to get the bureau up and running. Consequently, the bureau could not carry out all of its responsibilities in early 2010 because of the lack of an appropriation for staff. The director stated that before the hiring of licensing staff in November 2010, the bureau already had a backlog of roughly 1,200 applications.

- **New Processes:** Performing a business process analysis for the bureau would have involved reviewing existing business practices and changing them. However, the bureau would not have had any existing business practices on which to base any change because it had to develop new practices with the creation of the new bureau. The bureau had to create all new duty statements, hiring plans, accounting systems, cashiering systems, complaint processing, budget, regulations, and outreach. The focus was not on improving former processes but on creating new processes from scratch to meet the new mandates established for the bureau. As a result, a business process analysis would have been inadequate at that time to help resolve any deficiencies that existed from the BPPVE. One of the first steps of a business process analysis would be process mapping and without the necessary staff to conduct all of the functions of the bureau, the mapping would not be possible.

We have concerns with the director's response because if Consumer Affairs believed that the five former BPPVE staff were not sufficient to establish the bureau, it could have taken steps to lend staff from the other entities that it oversees to assist with the creation of the bureau. Furthermore, we fail to understand why Consumer Affairs would not have used its prior knowledge of the deficiencies noted with the BPPVE's former processes, coupled with any new requirements imposed by the act, to develop the bureau's business processes. As we point out in chapters 1 and 2, the bureau was not successful in expeditiously creating and implementing business processes for most of its regulatory functions. The director stated that in the future, a business process analysis would be appropriate to help the bureau resolve its deficiencies and streamline its workload to become more efficient.

The Legislature Has Several Options for Addressing the Bureau's Deficiencies

Effective January 1, 2015, the bureau will cease to exist unless the Legislature enacts legislation to delete or extend this date. In deciding how to proceed, the Legislature has several options to consider. It could continue to vest the powers and duties set forth in the act in the director of Consumer Affairs. The director would then have two choices: to continue the bureau in its current form or to reassign some of the bureau's current responsibilities to other entities within Consumer Affairs. The Legislature could also choose to transfer the powers and duties set forth in the act from the director to another state entity or entities. We believe that it is important to note that before the Legislature or Consumer Affairs

The bureau will cease to exist on January 1, 2015, unless the Legislature enacts legislation to delete or extend this date.

To address the bureau's deficiencies, the Legislature could reassign the bureau's responsibilities either to other entities within Consumer Affairs or to other state agencies.

decides to transfer the bureau's responsibilities either to other entities within Consumer Affairs or to other state agencies, those entities or agencies must determine whether they are capable of absorbing the additional responsibilities.

Consumer Affairs Could Work Closely With the Bureau to Help It Meet Its Responsibilities in Its Current Form

To meet its responsibilities effectively in its current form, the bureau would need to make significant changes. Specifically, Consumer Affairs would need to work with it to ensure that the bureau develops a time-sensitive corrective action plan that, at a minimum, addresses fully the deficiencies we identify in this report. Further, Consumer Affairs would need to provide the Legislature with quarterly status reports on the bureau's progress in implementing the plan.

In addition, certain legislative changes might improve the bureau's oversight of institutions. A December 2013 report issued by the Legislative Analyst's Office (LAO) recommended several changes to current law. For example, the LAO recommended that the Legislature consider eliminating the education-review components of the bureau's on-site inspections for nationally accredited institutions because, according to the report, accreditors generally conduct more extensive education program reviews than the bureau. If the Legislature chooses to allow the bureau to continue in its current form, it would also need to consider extending the bureau's sunset date to allow it sufficient time to implement the necessary changes and demonstrate it is capable of fulfilling its mandate.

The Legislature Could Reassign Some of the Bureau's Duties

Another approach to addressing the bureau's deficiencies would be for the Legislature to reduce its responsibilities. Specifically, one or more of the entities within Consumer Affairs could perform some of the bureau's duties. For example, Consumer Affairs' Complaint Resolution Program (complaint program) is responsible for processing the complaints that consumers file against businesses that certain bureaus within Consumer Affairs regulate. According to the director, the complaint program is currently assisting the bureau in reducing its complaints backlog by processing some of the complaints the bureau receives. In addition, the bureau has worked in the past with Consumer Affairs' Division of Investigation (division) to conduct complaint investigations. The division provides centralized investigative services for the various entities

within Consumer Affairs. Thus, an option would be to transfer the legislative requirement for receiving complaints from students and members of the public to another Consumer Affairs entity.

The bureau also has the ability to enter into memorandums of understanding (MOUs) with other boards and bureaus within Consumer Affairs. The three MOUs it now has in place (with the Board of Barbering and Cosmetology, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians) do not reduce its responsibilities. Instead, they generally require information sharing between the bureau and the other entities. However, the director of Consumer Affairs stated that the bureau could design future MOUs to transfer specific responsibilities that overlap with the responsibilities of Consumer Affairs' other regulatory agencies. For instance, the other regulatory agencies could conduct the reviews of approved educational curriculums.

Finally, a more sweeping change would involve the Legislature transferring the regulatory responsibility relating to certain vocations to other entities within Consumer Affairs. For example, the Legislature could require the Board of Registered Nursing to regulate all institutions that offer nursing degrees.

The Legislature Could Transfer the Bureau's Responsibilities to Other State Entities

In deciding how to move forward, the Legislature should also consider that many other states use approaches to regulating private postsecondary education that are fundamentally different from California's. For example, Florida and Pennsylvania regulate institutions solely through units within their state departments of education. The Legislature could adopt a similar approach by transferring all of the bureau's responsibilities to the California Department of Education (Education). However, because Education previously regulated institutions before the council did in the 1990s, it would need to assess if it is capable of absorbing this regulatory responsibility.

A hybrid approach wherein different state entities regulate different types of institutions is another option. For example, Texas regulates certain private degree-granting institutions through the Texas Higher Education Coordinating Board, and it regulates private postsecondary career institutions through the Texas Workforce Commission's Career Schools and Colleges department. According to its Web site, this commission is responsible for overseeing and providing workforce development services to employers and job seekers in Texas.

Regardless of the Option It Selects, the Legislature Needs to Consider the Impact of Federal Law

As we discuss in the previous chapters, beginning July 1, 2014, federal law will require the State to authorize most postsecondary educational institutions in order for them to participate in federal financial aid and other programs under the Higher Education Act of 1965. The bureau estimates that between 50 and 250 institutions in the State are currently exempt from its oversight and that they could lose their ability to participate in the federal programs due to the change in the law. To ensure these institutions' continued eligibility for these programs, the Legislature passed a law in 2013 that granted previously exempt institutions the option to apply to the bureau for a license.

However, we do not believe that federal law requires the State to authorize all previously exempt educational institutions in order for those institutions to participate in the federal financial aid program. In fact, we think that the federal law expressly permits the State to continue to exempt certain educational institutions from the bureau's regulation based on their accreditation status or the number of years they have been operating in the State. In our opinion, the State should seek clarification from its counsel and the federal government as to whether the bureau needs to license, and thus regulate, previously exempt educational institutions. In addition, the bureau will need to determine the full effect this federal law would have on its workload because it has not identified the number of additional institutions that could remain exempt under the federal law.

Because the federal law also requires institutions to be subject to a state complaints process in order for those institutions to be state authorized and, therefore, eligible for federal financial aid, the State will need to make available a complaint process for almost all postsecondary educational institutions regardless of their accreditation status or other exempt status. Under current state law, exempt institutions are not subject to the bureau's complaint process. Thus, in order for institutions to meet the federal requirements, the bureau's complaint jurisdiction must include nearly all of these institutions—even those that are exempt—or the Legislature must place the responsibility of investigating complaints for these exempt institutions on another state entity. When the U.S. Department of Education promulgated the final regulations and published them in the *Federal Register*, it clearly indicated that states may fulfill their complaint responsibilities through a state entity such as the Office of the Attorney General. Thus, federal law does not require the bureau to process complaints. As the Legislature considers changing responsibilities for processing complaints, it needs to consider this additional workload.

We believe the State should seek clarification as to whether the bureau needs to approve, and thus regulate, previously exempt educational institutions under federal law.

Recommendations

If the Legislature chooses to continue the bureau in its current form, it should direct Consumer Affairs to take the following actions immediately:

- Develop a time-sensitive corrective action plan that, at a minimum, addresses fully the deficiencies we identify in this report.
- Provide the Legislature quarterly status reports on the bureau's progress in implementing the corrective action plan.
- Assist the bureau in performing analyses of its business processes.
- Evaluate the costs associated with accelerating the bureau's implementation date for conversion to BreEZe and, if feasible, accelerate its conversion.
- Establish protocols to ensure the integrity of the data the bureau transfers into BreEZe.
- Conduct workload analyses for all of the bureau's operations so that it can determine its staffing needs and, if applicable, request additional permanent staff.
- Work with the Legislature to extend the bureau's sunset date to allow it sufficient time to implement the necessary changes.
- Seek clarification from its legal counsel and the federal government as to whether the bureau needs to authorize, and thus inspect and regulate, all currently exempt educational institutions.
- Seek appropriate statutory changes, if any, and adjust priorities and workload based on the advice it receives from its legal counsel and the federal government.

If the Legislature chooses to reduce the bureau's responsibilities, it should direct Consumer Affairs to immediately take all of the actions we identify above. In addition, it should direct Consumer Affairs to assess the feasibility of transferring certain bureau responsibilities, such as receiving complaints from students and members of the public, to other entities within Consumer Affairs. The assessment should include a determination of whether the entities are capable of absorbing the additional responsibilities.

If the Legislature chooses to transfer the bureau's responsibilities to one or more other state entities, it should consider taking the following actions:

- Establish a task force to identify the state entity or entities that are best equipped to assume the responsibility of regulating private postsecondary educational institutions.
- Direct the state entity or entities to develop a time-sensitive corrective action plan that, at a minimum, addresses fully the deficiencies we identify in this report.
- Direct the state entity or entities to provide the Legislature quarterly status reports on the implementation of the corrective action plan.
- Direct the state entity or entities to perform analyses of the business processes.
- Direct the state entity or entities to establish an effective data management system.
- Direct the state entity or entities to conduct workload analyses and determine the appropriate staffing level.
- Seek clarification from legal counsel and the federal government as to whether the State needs to authorize, and thus inspect and regulate, all currently exempt educational institutions.
- Seek appropriate statutory changes, if any, and adjust priorities and workload based on the advice it receives from its legal counsel and the federal government.

To comply with the federal law that requires institutions to be subject to a state complaint process in order for institutions to be state authorized and, therefore, eligible for federal financial aid, the Legislature should consider placing the responsibility of investigating complaints involving exempt institutions on another state entity.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: March 18, 2014

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For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

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February 24, 2014

Ms. Elaine M. Howle, State Auditor*
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

RE: Bureau for Private Postsecondary Education Draft Audit Report

Dear Ms. Howle:

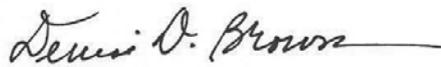
The Department of Consumer Affairs (department) is pleased to provide our response to your report on the Bureau for Private Postsecondary Education (BPPE), titled "Bureau for Private Postsecondary Education, It Has Consistently Failed to Meet Its Responsibility to Protect the Public's Interest". We have coordinated with the BPPE in preparing this response.

In general, the department and the BPPE concur with the recommendations made in chapters 1 and 2 of the report. However, in our opinion, we do not believe that the title of the report accurately reflects the conditions found at the BPPE. The DCA will continue to support the efforts of the BPPE to implement the recommendations. The attached schedule provides detail of the actions that have been taken or will be taken by the BPPE in order to comply with the recommendations. ①

After reviewing chapter 3, we realized that those recommendations were made to the Legislature and therefore, we have no comment on those recommendations.

If you have any questions, please contact DCA's Chief Internal Auditor, Annecia Wallace, at (916) 574-8190.

Sincerely,


Denise D. Brown
Director

Attachment: DCA Response to Recommendations

* California State Auditor's comments begin on page 61.

Name of Department: Consumer Affairs		Date of Report: February 24, 2014	
RESPONSE TO RECOMMENDATIONS			
BSA RECOMMENDATIONS	COMMENTS	ACTIONS TO BE TAKEN	PERSON RESPONSIBLE FOR ACTION (POSITION TITLE)
Chapter 1			
To ensure that it does not create unnecessary delays for institutions that desire to operate within the State, the bureau should do the following:			
	Reduce its backlog of licensing applications by reviewing and streamlining the applications process.	The Bureau is currently reviewing the process.	Licensing Chief, Bureau Chief
②	Develop a process for tracking the statuses of the applications it receives.	The Bureau has a tracking process in place that will be enhanced with the conversion to the BreEZe system. The Bureau will review the tracking system and search for a way to enhance the process until the BreEZe conversion.	Bureau Chief, Licensing Chief, Chief Deputy Director
②	Specify a timeframe within which staff must process applications.	A workload analysis is underway.	Bureau Chief, Licensing Chief
	Update its procedures to include the timeframes for processing applications.	Procedures will be updated when a timeframe is determined.	Bureau Chief, Licensing Chief
	Track the time its staff take to perform each step of the licensing process.	A workload analysis is underway.	Bureau Chief, Licensing Chief
	Use available resources-such as visiting committees-to assist in processing the applications.	The Bureau will use more visiting committees where appropriate.	Bureau Chief
③	To comply with the state law, the bureau needs to establish a proactive program to identify unlicensed institutions.	The Bureau will amend duty statements to include browsing the internet and telephone books for unlicensed activity.	Bureau Chief
	To ensure the unlicensed institutions it identifies cease to operate, the bureau needs to use the enforcement mechanisms that state law provides for sanctioning unlicensed institutions and track all relevant information related to its enforcement actions against these institutions.	The bureau will begin using existing enforcement mechanisms to sanction unlicensed institutions and will build this into the enforcement/citation procedures.	Bureau Chief, Enforcement Chief
	To comply with state law and to ensure that it effectively manages its inspections of institutions, the bureau should do the following:		
	Establish a schedule that maps out its anticipated announced and unannounced inspection dates for each of the institutions it regulates, and ensure that the schedule is consistent with state law.	The Bureau will establish a schedule for announced and unannounced inspections that is consistent with state law.	Bureau Chief

Prioritize its announced and unannounced inspections to focus on those institutions that have a higher risk of noncompliance.		The schedule that is identified above will be based upon risk of non compliance.	Bureau Chief
Seek official clarification from its legal counsel and the federal government regarding whether it must conduct compliance inspections for educational institutions approved through means of accreditation by July 1, 2014.		The legal office will seek official clarification.	Bureau Chief
Establish a mechanism to tracking the amount of time its staff take to complete each step of its announced inspection process.		A workload analysis is underway.	Bureau Chief
Continue its efforts to streamline the announced inspection process in order to reduce redundancies and increase efficiency.		The Bureau will continue efforts to streamline the announced compliance inspection policy and reduce redundancies and increase efficiency.	Bureau Chief
Evaluate periodically the reasonableness of the timeframe it established for completing announced inspections.		The Bureau will periodically evaluate the reasonableness of the timeframe it established for completing announced compliance inspections.	Bureau Chief
Establish procedures and timeframes for the unannounced inspection process.		The Bureau will establish procedures and timeframes for the unannounced inspection process.	Bureau Chief
Establish a mechanism for tracking the amount of time it takes to complete each step of the unannounced inspection process.		A workload analysis is underway.	Bureau Chief
Evaluate periodically the reasonableness of the timeframe it establishes to completing unannounced inspections.		The Bureau will periodically evaluate the reasonableness of the timeframe it established for completing unannounced compliance inspections.	Bureau Chief
To improve the quality of its inspections and related enforcement actions, the bureau should do the following:			
Establish policies, procedures, and training for managers that include guidance on how to review inspection files and how to document the evidence of their reviews.		The Bureau will establish policies and procedures for training managers that include guidance on how to review inspection files and how to document the evidence in their reviews.	Bureau Chief
Assign the task of resolving notices to comply to the inspection managers, as originally designed.		This recommendation has already been completed.	Bureau Chief
Monitor the status of its enforcement actions such as notices to comply on a weekly basis so that it can prevent delays in meeting mandated deadlines.		The Bureau will set up a weekly monitoring process for enforcement actions.	Bureau Chief, Enforcement Chief
Provide additional guidance to the inspectors on the distinction between minor and material violations and the related actions inspectors should take in response to identifying these violations.		The Bureau will provide additional guidance to the inspectors on the distinction between minor and material violations and the related actions inspectors should take in response to identifying these violations.	Bureau Chief
Chapter 2			

4

4

To reduce its backlog of unresolved complaints involving institutions, the bureau needs to establish benchmarks and monitor them to ensure the additional staff it requested and Consumer Affairs' complaint program staff resolve the backlog as expeditiously as possible.		The bureau will establish and implement benchmarks to aid in resolving complaints. Once implemented, complaint processing will be monitored by comparing the benchmarks with actual processing timeframes.	Bureau Chief, Enforcement Chief
To ensure that it closes complaints in a timely manner in the future, the bureau should do the following:			
Analyze its process and establish a reasonable timeframe for resolving them.		The Bureau will analyze the complaint process and establish a reasonable timeframe for resolving complaints.	Bureau Chief, Enforcement Chief
Modify its policies and procedures to include the established timeframe.		Policies and procedures will be modified to include processing timeframes upon completion of a workload analysis.	Bureau Chief
Ensure its staff adhere to the established timeframe.		Monitoring of staff and managers will be implemented in order to ensure that staff adhere to the established timeframe.	Bureau Chief
To ensure it addresses issues that pose the most serious potential risk to students, the bureau should ensure that staff follow its policies and procedures for prioritizing complaints and identify the urgent and high priority cases on the complaint case aging log. In addition, the bureau needs to establish a process for reviewing its staff's determination of the priority of complaints and for tracking the priority levels.		The Bureau will review and possibly rewrite procedures for prioritization of complaints and review the procedures with appropriate managers and staff to ensure that complaints are prioritized properly.	Bureau Chief
To ensure that staff identify and obtain sufficient evidence before closing complaints, the bureau should continue to work with Consumer Affairs to establish an investigative training program.		The Bureau will send all staff to the Enforcement Academy that is provided by the Department of Consumer Affairs and provide continuing education on evidence collection.	Bureau Chief
To ensure that institutions provide prospective students with accurate data in their fact sheets and annual reports, the bureau should immediately take the following actions:			
Direct its staff to review and retain documentation supporting the fact sheets during on-site inspections.		The Bureau will direct staff to maintain documentation collection during compliance inspections.	Bureau Chief
Train its staff how to correctly calculate the uniform data the institutions are to report in their annual reports and fact sheets in accordance with state law and regulations.		The Bureau will train staff to correctly calculate the uniform data that institutions are to report in their annual report and performance fact sheets.	Bureau Chief
Improve its outreach and education efforts to institutions to ensure that they comply with all applicable disclosure requirements.		The Bureau will improve its outreach and education efforts to institutions to ensure that they comply with all applicable disclosure requirements.	Bureau Chief
To process recovery fund claims within its 90-day goal, the bureau needs to track the information that will allow it to identify which steps in the process result in delays. When it identifies the delays in the process, the bureau should take steps to address them.		The Bureau will track information and identify steps that create delay as well as take steps to address the delays.	Bureau Chief

5

<p>To reduce the available balance in the recovery fund below the statutory limit of \$25 million, the bureau should continue its plans to address the collection of the recovery fund assessment.</p>		<p>The Bureau will continue with the regulations to reduce the collection of STRF assessments.</p>	<p>Bureau Chief</p>			
<p>The bureau should implement and enforce policies, procedures, and sanctions to ensure that institutions submit to the bureau the recovery fund assessments that they collect from students so that institutions are not unjustly enriched.</p>		<p>The Bureau will review the policies and procedures for ensuring that institutions submit STRF recovery assessments to the Bureau.</p>	<p>Bureau Chief</p>			
<p>Chapter 3</p>						
<p>If the Legislature chooses to continue the bureau in its current form, it should direct Consumer Affairs to take the following actions immediately:</p>						
<p>Develop a time-sensitive corrective action plan that, at a minimum, addresses fully the deficiencies we identify in this report.</p>	<p>This section is addressed to the Legislature and, therefore, the DCA and the BPPE have no comment.</p>					
<p>Provide the Legislature quarterly status reports on the bureau's progress in implementing the corrective action plan.</p>						
<p>Assist the bureau in performing analyses of its business processes.</p>						
<p>Evaluate the costs associated with accelerating the bureau's implementation date for conversion to BreEZe and, if feasible, accelerate its conversion.</p>						
<p>Establish protocols to ensure the integrity of the data the bureau transfers into BreEZe.</p>						
<p>Conduct workload analyses for all of the bureau's operations so that it can determine its staffing needs and, if applicable, request additional permanent staff.</p>						
<p>Work with the Legislature to extend the bureau's sunset date to allow it sufficient time to implement the necessary changes.</p>						
<p>Seek clarification from its legal counsel and the federal government as to whether the bureau needs to approve, and thus inspect and regulate, all currently exempt educational institutions.</p>						
<p>Seek appropriate statutory changes, if any, and adjust priorities and workload bases on the advice it receives from its legal counsel and the federal government.</p>				<p>This section is addressed to the Legislature and, therefore, the DCA and the BPPE have no comment.</p>		

<p>If the Legislature chooses to reduce the bureau's responsibilities, it should direct Consumer Affairs to immediately take all of the actions we identify above. In addition, it should direct Consumer Affairs to assess the feasibility of transferring certain bureau responsibilities, such as receiving complaints from students and members of the public, to other entities within Consumer Affairs. The assessment should include a determination of whether the entities are capable of absorbing the additional responsibilities.</p>	<p>This section is addressed to the Legislature and, therefore, the DCA and the BPPE have no comment.</p>
<p>If the Legislature chooses to transfer the bureau's responsibilities to one or more other state entities, it should consider taking the following actions:</p>	
<p>Establish a task force to identify the state entity or entities that are best equipped to assume responsibility of regulating private postsecondary education institutions.</p>	
<p>Direct the state entity or entities to develop a time-sensitive corrective action plan that, at a minimum, addresses fully the deficiencies we identify in this report.</p>	
<p>Direct the state entity or entities to provide the Legislature quarterly status reports on the implementation of the corrective action plan.</p>	
<p>Direct the state entity or entities to perform analysis of the business process.</p>	
<p>Direct the state entity or entities to establish an effective data management system.</p>	
<p>Direct the state entity or entities to conduct workload analyses and determine the appropriate staffing level.</p>	
<p>Seek clarification from its legal counsel and the federal government as to whether the bureau needs to approve, and thus inspect and regulate, all currently exempt educational institutions.</p>	
<p>Seek appropriate statutory changes, if any, and adjust priorities and workload bases on the advice it receives from its legal counsel and the federal government.</p>	
<p>To comply with the federal law that requires institutions to be subject to a state complaint process in order for institutions to be state authorized and, therefore, eligible for federal financial aid, the Legislature should consider placing the responsibility of investigating complaints involving exempt institutions on another state entity.</p>	

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS

To provide clarity and perspective, we are commenting on the California Department of Consumer Affairs' (Consumer Affairs) response to our audit. The numbers below correspond to the numbers we have placed in the margin of Consumer Affairs' response.

Consumer Affairs stated that it does not believe that the title of our report accurately reflects the conditions found at the Bureau for Private Postsecondary Education (bureau). However, we stand by our report title and conclusion that the bureau has consistently failed to meet its responsibility to protect the public's interests. On page 44 of this report, we present a recap of our audit findings that led to our conclusion. Specifically, as we discuss in Chapter 1, the bureau has a significant backlog of licensing applications to process, has performed only a fraction of the inspections that state law requires, and has not been proactive in identifying and sanctioning institutions operating in the State without its authorization. As we discuss in Chapter 2, the bureau has a backlog of complaints to investigate, has not prioritized complaints that put students at risk, has not ensured that institutions accurately disclose necessary information, and has failed to process Student Tuition Recovery Fund claims in a timely manner.

①

Consumer Affairs' response does not specifically address our recommendations that the bureau develop a process for tracking the status of the licensing applications it receives and the time its staff take to perform each step of the process. On page 17, the chief of the licensing unit stated that the bureau does not track the status of each application because it does not have a database with this ability. In addition, we found that the log created by the chief of its licensing unit that we discuss on page 17 does not track the time its staff take to perform each step of the licensing process. Thus, we would expect the bureau to focus its efforts on developing a mechanism to track this information while it awaits its conversion to BreEZe.

②

Consumer Affairs' response does not go far enough in addressing our recommendation that, to comply with state law, the bureau needs to establish a proactive program to identify unlicensed institutions. The bureau's intent to merely amend duty statements to include browsing the Internet and telephone books falls short of establishing a program. On page 18, we offered suggestions on how the bureau might establish a program to identify unlicensed private

③

postsecondary educational institutions (institutions) proactively, including contacting Consumer Affairs or its other boards and bureaus to determine any best practices that it could implement.

- ④ Consumer Affairs did not specifically address our recommendation that the bureau should establish a mechanism for tracking the amount of time its staff take to complete each step of its announced and unannounced inspection processes. A workload analysis is beneficial for specifying the time frame in which staff must complete the inspections. However, as we state on pages 21 and 22, the bureau's compliance master list only includes information on each institution, the month and year it selected the institution for an inspection and, if applicable, the month and year it completed the inspection. Thus, we would expect the bureau to focus its efforts on developing a mechanism to track the amount of time its staff take to complete each step of its announced and unannounced inspection processes while it awaits its conversion to BreEZe.
- ⑤ Consumer Affairs states that the bureau will review the policies and procedures for ensuring institutions submit recovery assessments to the bureau. However, as we state on page 39, the bureau has not established procedures to track whether institutions actually forward the assessments they collect from their students to the bureau. Thus, as we state in our recommendation on page 42, the bureau should implement and enforce policies, procedures, and sanctions to ensure that institutions submit to the bureau the recovery fund assessments that they collect from students so that institutions are not unjustly enriched.