INITIAL REPORT

CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS

BUREAU FOR PRIVATE POSTSECONDARY AND VOCATIONAL EDUCATION OPERATIONS AND ADMINISTRATIVE MONITOR

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BPPVE Operations and Administrative Monitor

Director, NewPoint Group Management Consultants

Sacramento, California

September 26, 2005

NewPoint Group®
Management Consultants

September 26, 2005

Ms. Charlene Zettel, Director
Department of Consumer Affairs
400 R Street
Sacramento, California 95814

Bureau for Private Postsecondary and Vocational Education
Initial Report of the Operations and Administrative Monitor

Dear Ms. Zettel,

Enclosed is the Initial Report of the Operations and Administrative Monitor for the Bureau for Private Postsecondary and Vocational Education. The report provides a comprehensive review and assessment of the core components of the statutes and regulations governing regulation of private postsecondary and vocational educational institutions in California, and all of the Bureau's major business and administrative support processes. This report specifically addresses all of the requirements set forth in SB 1544 (Figueroa) related to completion of this assignment, and contains 77 separate recommendations to address statutory, organizational, operational, financial, and other improvement needs. Some of the recommendations can be implemented without making major changes to the program's governing statutes or regulations, and without obtaining significant additional financial and staffing resources. Most, however, require substantive changes in one or more of these areas.

It is widely recognized that the state's program for regulation of private postsecondary and vocational education institutions has been experiencing major problems for many years. The results of this assessment confirm the existence of these problems, which have persisted ever since the Bureau was created in 1998. In many areas, the problems pre-date formation of the Bureau. The disruption caused by abolishment of the predecessor Council for Private Postsecondary and Vocational Education and concurrent creation of the Bureau appears to have aggravated these problems. Subsequent efforts to downplay or minimize the magnitude of the problems being experienced have not always helped to enable their timely resolution.

While some forward progress has been made during the past seven (7) years, many major problems have been addressed only superficially, or not addressed at all. The nature and magnitude of the problems being experienced, in combination with the Bureau's limited financial and staffing capabilities, suggests that many of the problems are likely to persist for some time. These circumstances are equally frustrating to Bureau staff, Department management, regulated institutions, and oversight authorities. All participants would prefer that these problems be resolved, but there has rarely been any consensus as to how this should be accomplished.

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The Monitor gratefully acknowledges the support, assistance, and cooperation of the many individuals and entities who contributed input, ideas, and suggestions to this Initial Report. In particular, we wish to thank all Department of Consumer Affairs and Bureau staff who contributed to this effort. Since commencement of work on this engagement, the Monitor has received full and complete cooperation from numerous executives, managers, supervisors, and staff who have given generously of their time, often times with little or no advance notice. The Bureau has been criticized for many years, but these staff welcomed this unique opportunity to begin addressing the problems that exist. Their candor and support were outstanding and, without their assistance, completion of this assessment would have been substantially more difficult.

We wish to extend our gratitude to the representatives of all of the other California State Government agencies and departments with whom we met during the course of this project, as well as the representatives of a number of private postsecondary educational and vocational training institutions, accrediting agencies, and industry and student advocacy groups. In all cases, we were provided valuable information and documentation that helped us in formulating the various findings, conclusions, and recommendations contained herein.

We appreciate the opportunity to be of service to the Department of Consumer Affairs. If you have any questions or need additional information, please call me at (916) 442-0469, or e-mail me at benfrank@newpointgroup.com.

Sincerely,

NewPoint Group®, Inc.

Ben Frank

Benjamin M. Frank
Director

Initial Report of the Operations and Administrative Monitor Bureau for Private Postsecondary and Vocational Education

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EXECUTIVE SUMMARY

Introduction

During September 2004, SB 1544 (Figueroa) was enacted to extend the January 1, 2005, sunset date of the Private Postsecondary and Vocational Education Reform Act of 1989 by 2½ years to July 1, 2007. SB 1544 also required that the Director of the Department of Consumer Affairs (DCA) appoint a Bureau of Private Postsecondary and Vocational Education Operations and Administrative Monitor (Operations Monitor) by January 3, 2005.

SB 1544 requires that the Operations Monitor assess the Bureau's administrative operations and the provisions of the Reform Act, and submit an initial report of findings and conclusions to the Director of DCA, the Bureau, and the Legislature by October 1, 2005. A second, final report is required to be submitted by April 1, 2006.

The goals of the Operations Monitor assignment, as set forth in SB 1544, are to improve the Bureau's overall efficiency, effectiveness, and compliance with state laws, particularly with respect to the Bureau's approval, complaint, and enforcement processes. The scope of the assessment encompasses the Bureau's application review and approval, revenue collection, and complaint and enforcement processes.

SB 1544 specifically required review and assessment of all of the following areas:

- Relevant laws and regulations to identify areas that would improve state regulation and maintain or improve student and public protection
- Quality and timeliness of the Bureau's application review and approval processes
- Collection of fees
- Collection of information from, and the ability to disseminate information regarding, entities or persons regulated by the Bureau
- Quality, consistency, and performance of the Bureau's business processes, including complaint processing and investigation
- Complaint backlogs
- Consistency in the application of sanctions or discipline imposed on regulated institutions
- Capabilities to perform outreach to prospective students of private postsecondary and vocational education institutions.

The DCA solicited bids for performance of the assessment required by SB 1544, and awarded a contract to NewPoint Group, Inc. On March 7, 2005, the Department of General Services approved the DCA's contract with NewPoint Group. The contract provides for submission of the Operations Monitor's Initial Report by October 1, 2005, and for submission of the Final Report by January 20, 2006, unless extended.

Pursuant to this contract, the following major tasks were performed:

- Collected and reviewed background materials, including the Private Postsecondary and Vocational Education Reform Act and related regulations, recent amendments to the Reform Act, and reports prepared previously by the Bureau, the predecessor Council for Private Postsecondary and Vocational Education (Council), the California Postsecondary Education Commission (CPEC), CSUS Foundation, Price Waterhouse, the California Bureau of State Audits, the Department of Consumer Affairs' Internal Audits Office, the California Research Bureau, the Joint Legislative Sunset Review Committee, and the U.S. Department of Education, Office of Inspector General.
- Conducted interviews with representatives of the Department of Consumer Affairs, several DCA-affiliated regulatory boards, the State and Consumer Services Agency, the California Postsecondary Education Commission, the California Department of Justice, the Western Association of Schools and Colleges (WASC), selected consumer and industry advocacy groups, selected private postsecondary and vocational training institutions, and Senate Business and Professions Committee staff.
- Conducted interviews with nearly all of the Bureau's managers and staff, either individually or in small groups.
- Collected and analyzed revenue and expenditure data for each of the Bureau's program funds covering all periods subsequent to formation of the Bureau.
- Collected and analyzed organizational structure and staffing information covering all periods subsequent to formation of Bureau.
- Collected and analyzed workload data for all of the Bureau's major business processes covering all periods subsequent to formation of the Bureau, where available.

The information and findings resulting from the above efforts were used to complete required assessments of the Bureau's major business processes, and of the statutes and regulations governing the state's regulation of private postsecondary and vocational education institutions. Additionally, we completed a general assessment of the Bureau's staffing and revenue collection needs to the extent practicable within the calendar time and budget constraints established for this project.

As part of the scope of work for this assignment, we also completed a preliminary assessment of alternative approaches to restructuring the Bureau's regulatory responsibilities (e.g., by transferring some, or all, of the Bureau's regulatory responsibilities to other California State Government agencies or departments). It was determined that changes of this nature would address few, if any, of the problems that are currently being experienced by the Bureau. Instead, as occurred when regulatory responsibilities were transferred from the predecessor Council to the Bureau in 1998, an organizational restructuring of the Bureau's regulatory responsibilities would likely exacerbate the numerous problems currently being experienced, and reverse the forward progress made by the Bureau over the past seven (7) years. Accordingly, our assessment efforts focused on identifying and assessing alternative approaches for improving the statutes governing the Bureau's regulatory program, improving the processes used by the Bureau to fulfill these responsibilities, and determining the sufficiency of the Bureau's staffing and revenue collections.

Program Evolution

The state's program for regulation of private postsecondary and vocational education institutions has been plagued by problems for the past 20 years. During the late-1980s, the state developed a reputation as the "diploma mill capital of the world." During this period, regulation of the industry was carried out by the Private Postsecondary and Vocational Education Division within the State Department of Education. As a result of concerns about the integrity and value of the degrees and diplomas issued, widely varying standards, the lack of enforcement provisions, and the exemptions from oversight authorized in statute, a comprehensive reform bill was enacted (the *Private Postsecondary and Vocational Education Reform Act of 1989*).

In addition to overhauling the state's regulatory program, the Reform Act transferred responsibility for the program to a 20-member Council for Private Postsecondary and Vocational Education Council (Council). Concurrently, the *Maxine Waters School Reform and Student Protection Act* was enacted. The Maxine Waters Act established somewhat different requirements and standards for private postsecondary and vocational education institutions that are subject to its provisions. The provisions of the Reform Act and the Maxine Waters Act were merged, but doing so created a fragmented structural framework for regulation of private postsecondary and vocational education institutions with numerous duplicative and conflicting statutory provisions.

Ever since its creation, concerns have been expressed about the structure of the Reform Act. For example, in 1995 the California Postsecondary Education Commission (CPEC) found that the Reform Act was "... difficult to interpret ..." and recommended that the Council "develop a legislative proposal to restructure the Act with the limited objective of clarifying the law for all parties." CPEC also recommended that the Act be amended to establish consistent standards for all programs "... regardless of whether they award a degree, certificate, or diploma, and regardless of whether they are offered by a profit or non-profit institution."

Problems with the performance of mission-critical regulatory responsibilities also have persisted for an extended period of time. For example, in 1995 the CPEC found that the approval process for non-degree programs was "limited to a staff review of the institution's compliance with a check list of items" and that "no in-depth review of the institution's instructional programs (was) conducted and the quality of the programs (was) assumed to be sufficient if the institutions (had) a minimum 60% completion rate, a 70% placement rate and (met) the institutional requirements for approval." CPEC expressed concern about "relying exclusively upon these minimal requirements as indicators of quality, particularly since some of the statistics (were) self-reported and not regularly verified through an audit process of the Council." CPEC also found a high level of concern and frustration among representatives of degree-granting institutions regarding the

judgments made by visiting team members pertaining to the 15 different review areas that are required to be assessed to determine whether a degree-granting institution has the capability to deliver a quality educational program. Additionally, CPEC found that there were potentially "up to 1,000" unapproved institutions operating in the state, and that the Council lacked the enforcement powers or punitive measures needed to address these violators. CPEC recommended amending the Act "... to provide the Council with the authority and other resources to ensure that all institutions operate in compliance with the Act."

Subsequently, legislation that would have extended the Council's June 30, 1997, sunset date was vetoed by the Governor as a result of concerns about (1) the overall level of fees and the ability of small schools to pay these fees, (2) how Council staff were carrying out their responsibilities, and (3) the absence of an administrative appeals process. Subsequently, the Reform Act's sunset date was extended by six months to January 1, 1998. However, throughout this period, due to uncertainty regarding continuation of the state's regulatory program, Council staff were encouraged to seek other employment opportunities. By the end of 1997, about 75 percent of Council staff had separated from the agency, and cartons of unprocessed applications had accumulated in the Council's offices.

During August 1997, Price Waterhouse was retained by the Department of Consumer Affairs to perform a diagnostic review of the Council's processing cycles and internal accounting control procedures. The diagnostic review identified significant internal control deficiencies which precluded performance of comprehensive testing of all of the Council's processing cycles. Instead, the scope of Price Waterhouse's assessment was narrowed to encompass the following six areas:

- Annual fee billings and collections
- Renewal fee billings and collections
- STRF assessments and collections
- STRF claims and fund balance
- Balance sheet account balances
- Selected types of expenditures.

Price Waterhouse reported to the Department that:

- Events leading to the Council's operations being transferred to DCA had disrupted virtually all of the functions of the Council.
- A significant number of Council staff had resigned within the past year and their vacant positions had not been filled.
- A shortage of staff had resulted in many important financial, technical, and administrative functions not being performed.

Price Waterhouse also reported significant problems involving (1) annual fee collections, (2) renewal application fee collections, (3) STRF assessment collections, and (4) STRF claims processing and fund solvency. Additionally, Price Waterhouse identified problems in several other areas, including (1) segregation of duties within accounting

functions, (2) the Council's database system, (3) schools' reporting of completion and placement rates, and (4) the Council's analysis and verification of information furnished by schools for purposes of determining fee amounts and continued approval by the Council.

In late-1997, AB 71 (Wright) was enacted. AB 71 created the Bureau of Private Postsecondary and Vocational Education within the Department of Consumer Affairs, transferred responsibility for administration of the Reform Act to the Bureau, and extended the Reform Act's sunset date to January 1, 2005. AB 71 also repealed all of the provisions pertaining to Short-Term Training Seminars, and enacted new provisions establishing a registration program for five (5) specified categories of programs (Intensive English Language, License Exam Preparation, Continuing Education, Short-Term Career Training, and Short-Term Seminar Training).

In 2000, the Bureau of State Audits (BSA) conducted an audit of the Department of Consumer Affairs to determine whether the Department was properly overseeing its regulatory boards and bureaus. The BSA reviewed four boards and bureaus in detail, including the Bureau of Private Postsecondary and Vocational Education. The Bureau found that the Department was not fulfilling is oversight responsibilities, and was allowing weaknesses in licensing and complaint processing to continue. Major findings pertaining to the Bureau included the following:

- The Bureau was taking longer than the year its regulations allow to issue a license (e.g., an average of 525 days for degree-granting institutions).
- Licensing staff were issuing licenses without completing required financial reviews, and were renewing licenses without completing required complaint history reviews.
- Applicants were charged application fees that were higher than legally allowed rates.
- Bureau staff were not consistently mediating complaints that were received, had suspended the processing of complaints that could not be mediated, and had not established timelines for processing complaints to ensure prompt resolution.

In 2002, the DCA's Internal Audit Office completed a review of the Bureau's programs and operations. The DCA's Internal Audit Office recommended that the Bureau:

- Modify its strategic plan to assist management in measuring the success of its operations.
- Consistently use written application review and approval policies and procedures and provide staff training pertaining to the Bureau's application review and approval requirements.
- Monitor workload to ensure that application review and approval processing timeframe requirements are met, and complete quality control reviews of completed institution files.
- Establish a process to ensure all fees and assessments are collected, and to take disciplinary action against non-paying institutions.
- Ensure payment of STRF claims in accordance with statutory requirements.
- Reestablish STRF verification processes to ensure that all institutions are properly calculating and paying their STRF assessments.

- Develop written complaint handling procedures.
- Ensure that all approved institutions comply with the Bureau's annual reporting requirements, take disciplinary action against any non-complying institutions, and develop written procedures for reviewing financial and educational program information.
- Improve policies and procedures related to enforcing eligibility requirements prior to issuing agent permits and certificates of authorization, and systems for tracking compliance with processing timeframe requirements.

During 2002, the Bureau completed its first Sunset Review before the Joint Legislative Sunset Review Committee. As part of this review, the Bureau committed to the following actions:

- Recommend to and have the Director of DCA make appointments to and reestablish the Bureau's Advisory Board.
- Simplify and streamline the Bureau's appeal procedures.
- Sponsor legislation to amend current statutes and regulations to ensure comprehensive, efficient, and effective application approval procedures.
- Develop and propose regulations to implement a Bureau-operated voluntary arbitration program (as required by statute).
- Sponsor legislation to amend current statutes to improve the Bureau's capability to quickly initiate appropriate enforcement or disciplinary actions.
- Address deficiencies noted in the BSA audit pertaining to the Bureau's written procedures governing application processing, complaint handling, and other activities.
- Make needed statutory and regulatory changes required to ensure student protection and the quality of education in connection the use of Internet (on-line) education.

During 2003, SB 364 (Figueroa) and SB 967 (Burton) were enacted. SB 364 required that the Bureau:

- Work with staff of the Joint Legislative Sunset Review Committee to streamline the Reform Act.
- Determine what changes are needed to improve the effectiveness of the state's regulation of private postsecondary and vocational education.
- Determine the cost of meeting its statutory obligations, and staffing requirements to meet these obligations, and whether the current fee structure supports these requirements.
- Continue to improve its data collection and dissemination systems.
- Expand its outreach program to prospective students, subject to first determining that its has sufficient revenues to fulfill its current obligations and that the costs of an expanded program will not jeopardize the Bureau's capability to fulfill those obligations.
- Report to the Legislature on its progress in implementing the corrective actions needed to resolve the deficiencies identified in the BSA and DCA Internal Audit Office audits, and the status and timeliness of its application and complaint processing, the condition of the STRF, the status and capabilities of its data processing and dissemination systems, its outreach efforts to current and prospective students, and any recommendations for improvements to its operations, including recommended revisions to the Reform Act.

SB 967 fully exempted all WASC-accredited institutions from the Reform Act. Previously, only WASC-accredited institutions that exclusively offered degree programs were exempted from the Reform Act. SB 967 also modified the Reform Act's requirements related to approval of new degree, diploma, or certificate programs for approved non-WASC regionally accredited institutions.

During the past 18 months, the Reform Act and the Bureau continued to be the subject of criticism from several sources. For example, in June 2004, the Joint Committee on Boards, Commissions, and Consumer Protection held a special hearing regarding the Bureau. Among the issues and recommendations resulting from this review were included the following:

- A thorough review of the regulatory structure and oversight responsibilities of the Bureau needs to be performed.
- The Reform Act needs to be revised to make it intelligible and enforceable.
- The Bureau's regulatory scope should be realigned.
- The Department and the Bureau, in consultation with others, should develop recommendations for providing oversight of out-of-state institutions offering Internet-based educational programs.
- The Legislature should consider enacting simpler and more workable criteria for what qualifies as a registered institution.
- Various changes to the statutes governing the STRF Program and school closures should be considered by the Legislature.
- The sufficiency of the Bureau's revenues and staffing needs to be determined.
- The Administration and the Department should consider restoring, at least temporarily, the Bureau's staffing resources to clear out existing backlogs.
- The Bureau should immediately begin meeting on a regular basis with its Advisory Committee.

Additionally, it was recommended that the Department appoint an Operations and Enforcement Monitor to complete an objective assessment of California's regulation of private postsecondary and vocational education institutions, including both the administrative operations of the Bureau and the provisions of the Reform Act.

Two months later, in August 2004, *The Sacramento Bee* published a special article that strongly criticized the Bureau, and which characterized the Bureau as a "passive consumer protection agency that does little to monitor schools." Specific criticisms included:

- "The Bureau is slow to process new school applications, allowing some to operate for years without permanent licenses."
- "The Bureau spends little time evaluating the quality of the education schools offer."
- "When the Bureau looks into complaints, it rarely conducts field investigation or follow-up."
- "The Bureau doesn't monitor whether schools meet minimum graduation and job-placement rates required by law."

The article also quoted a senior attorney at the Legal Aid Foundation of Los Angeles as saying that, "Students complain, and they [the Bureau] do nothing about it" and "It [the Bureau] is totally worthless." Additionally, it was alleged that deficient practices identified by the BSA during 2000 continued and that annual reports that the Bureau is required to submit to the California Postsecondary Education Commission (CPEC) had not been submitted for several years.

In January 2005, the Director of DCA provided an update on the status of the Bureau at a special hearing before the Joint Committee on Boards, Commissions, and Consumer Protection. This hearing was prompted by the August 2004 article in *The Sacramento Bee*. During the hearing, DCA and Bureau staff acknowledged, along with some members of the Committee, that the Bureau had been "neglected" and/or "mismanaged" for many years. It also was disclosed that 46 schools had been operating with a Temporary Approval for more than a full year, and that no site visits had been conducted to any of these institutions. Also, issues related to the need to overhaul the Reform Act and/or restructure the Bureau's regulatory responsibilities remained unresolved.

Finally, in response to legislative requirements, the Bureau, with the assistance of personnel and budget staff form the DCA, completed a workload, staffing, and fee study. The Bureau's report was submitted to the Legislature on March 1, 2005. Results of the study showed that program revenues and costs were not-aligned, and that the 0305 Fund was absorbing a significant amount of STRF administrative costs. The Bureau also reported that its 0305 Fund was insufficient to support ongoing operations, and disclosed potential problems related to (1) requirements to maintain separate STRF accounts for non-degree and degree institution assessments, (2) caps on the balances that can be accumulated in STRF accounts, and (3) various administrative complexities associated with the Bureau's reapproval application fee and STRF assessment processes. Recommendations to address these issues were not provided.

Summary of Findings, Conclusions, and Recommendations

The results of this assessment show that nearly all of the problems previously identified when this program was administered by the predecessor Council continue to exist today. Additionally, these pre-exiting problems were exacerbated by the transfer of regulatory responsibility from the Council to the Bureau in 1998. Significant additional backlogs accumulated during the Bureau's first year of operations on top of the large backlogs that were inherited from the Council. The Bureau was unable to eliminate these legacy backlogs prior to the expiration of large numbers of limited term positions that were initially authorized for this purpose.

Subsequently, the Bureau was subject to the hiring freezes, vacant position sweeps, and budget reductions that were imposed on all state agencies in response to the state's

general fund budget crisis. Notwithstanding these cost-saving measures, and the continued collection of some fees without legal authority to do so, the Bureau's expenditures routinely exceeded its revenues. The Bureau has nearly fully depleted the $5 million reserve fund that it inherited from the Council. There is a significant risk that the Bureau's 0305 Fund will become insolvent at some point during the current fiscal year.

The results of this assessment also show that nearly all of the problems previously identified by the Bureau of State Audits and the Department's Internal Audits Office continue to persist. Also, nearly all of the problems identified during hearings before the Joint Legislative Sunset Review Committee, and successor Joint Committee on Boards, Commissions, and Consumer Protection, continue to persist. Additionally, the results of the assessment substantiate the allegations recently reported in *The Sacramento Bee*.

Results of this assessment also are generally consistent with the results of the Bureau's recently completed fee and staffing study. The report submitted by the Bureau in March 2005 also disclosed the existence of potential problems involving the Student Tuition Recovery Fund. In fact, the non-degree account within this fund had a $1.9 million deficit balance as of June 30, 2005. This deficit balance does not include any allocations of 0305 Fund cross-subsidies of STRF administrative costs as has been occurring for many years. Over the past several years, the 0305 Fund has possibly absorbed as much as a $1 million of STRF administrative costs, mostly related to the processing of tuition refund claims associated with the closure of non-degree-granting institutions.

In addition to confirming the continued existence of all of the above problems, we have identified a number of additional issues and problems that need to be addressed. In fact, significant problems were identified with nearly every significant component of the state's current regulatory program. This Initial Report provides background information and recommendations for improvement encompassing all of the following areas:

- Non-WASC regional and nationally accredited institution exemptions
- New institution application processing
- New institution application fee collections
- Addition/change application processing
- Additional/change application fee collections
- Regular and unannounced inspections
- Annual fee collections
- Reapproval application processing
- Reapproval application fee collections
- Religious exemption application processing
- Registration application processing
- Registration application fee collections
- COA application processing
- COA fee collections
- Agent permit application processing
- Agent permit fee collections
- Unapproved institution enforcement
- Approved institution complaint mediation and enforcement
- Voluntary arbitration program regulations
- Mandatory arbitration clause enforcement
- STRF assessment collections
- STRF claim payments

- STRF administrative cost accounting
- Institutional annual reporting
- Biennial financial reporting
- Outreach and education
- Veterans Education Program (Title 38)
- Bureau annual reporting
- Complaint disclosures
- Transferability of credits disclosure
- Bureau organization and staffing
- 0305 Fund condition
- Bureau management information and fiscal systems.

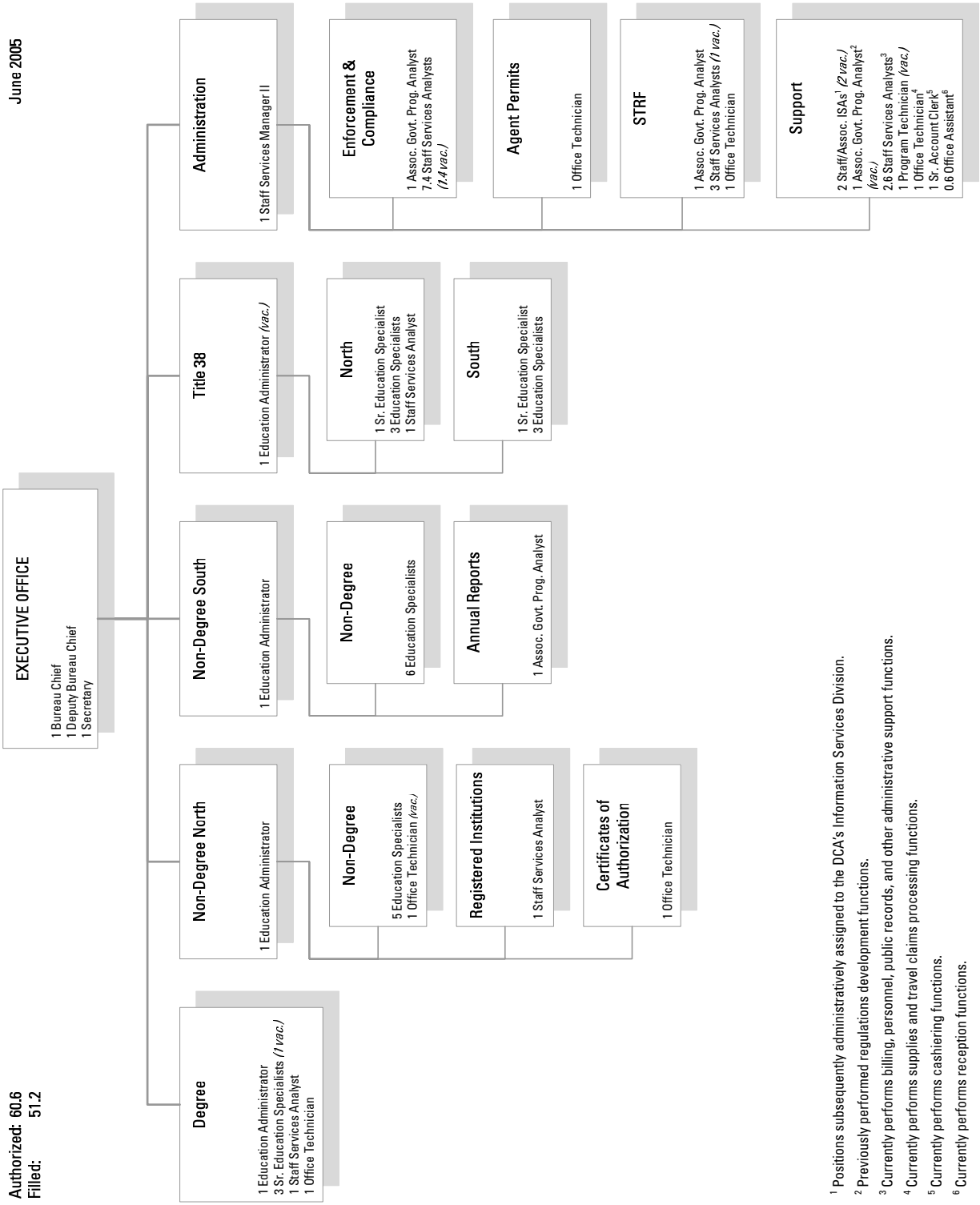
Notwithstanding the breadth and depth of problems being experienced, over the past seven (7) years Bureau staff have gradually made progress in reducing the large backlog of applications that was inherited from the Council or which accumulated during the Bureau's first year of operations. This progress was achieved in the midst of successive waves of budget and staffing reductions. More recently, in response to its current fiscal circumstances, the Bureau began implementing various self-imposed austerity measures. Unfortunately, these same measures are likely to adversely impact the Bureau's capability to keep pace with ongoing application workload demands and, thereby, stall or reverse the progress that has been made in reducing the backlog of pending applications and site visits to institutions that have been operating with a temporary approval for longer than a full year.

Bureau Staffing Capability and Financial Resource Deficiencies

The Bureau's budget has been structurally out of balance ever since the Bureau was established and, as discussed above, the Bureau's 0305 Fund for general program administration is now nearly insolvent. Previously the Bureau, and predecessor Council, had as many as 70 to 80 authorized permanent positions, most of which were filled. Currently, the Bureau has only 60.6 authorized positions and, due to its current fiscal circumstances, only 51 of these positions are currently filled. Also, a significant portion of the currently filled positions are allocated to the federally funded Title 38 Program.

Exhibit ES-1, on the next page, illustrates the Bureau's June 30, 2005, staffing allocations. As shown by Exhibit ES-1, only a small number of Bureau staff are allocated to the Non-Degree and Degree Units, and available to perform core application review and approval functions, including completion of site visits to new and currently approved institutions. Subsequently, as a cost-savings measure, two (2) Education Specialist series positions were redirected to the Title 38 Program, and three (3) Education Specialist series positions were redirected to staff a new Enforcement Unit. Currently, only 10 Education Specialist series staff and 2 Education Administrators are allocated for performance of core application review and approval, and associated site visit functions.

Exhibit ES-1
Organization Chart
June 2005



[1] Positions subsequently administratively assigned to the DCA's Information Services Division.
[2] Previously performed regulations development functions.
[3] Currently performs billing, personnel, public records, and other administrative support functions.
[4] Currently performs supplies and travel claims processing functions.
[5] Currently performs cashiering functions.
[6] Currently performs reception functions.

Neither the Bureau, nor the predecessor Council, ever fulfilled many of their most mission-critical statutory obligations, even when they had significantly more staff available to do so than is currently the case. In many cases, Bureau staff are not currently completing application reviews and required site visits on a timely basis. Also, many other application review, compliance monitoring, site inspection, fee collection, and enforcement activities are being performed at only a superficial level, or on an intermittent rather than continuous basis, or are not being performed at all. Continuous performance of these activities is essential to ensure the overall integrity of the state's regulatory program.

It is not realistic to expect that the small number of staff (10, plus 2 first-level managers) currently available to oversee 1,500 currently approved institutions will be able to keep pace with the flow of add/change and reapproval applications submitted by these institutions, as well as a pro rata share of new institution applications, while concurrently addressing the many other workload demands and program infrastructure improvement needs that exist. The Bureau clearly does not have adequate financial or staffing resources to fulfill its statutory obligations, even if the current statutory framework was properly structured, which it is not.

Private Postsecondary and Vocational Education Reform Act Deficiencies

While there are many technical changes and improvements that could be made to streamline and simplify some parts of the Reform Act, such changes would not address the substantive deficiencies that exist with the Reform Act's structural framework, and would have little impact on many of the problems currently being experienced. There are at least three (3) significant structural deficiencies with the current Reform Act.

Multiple, Fragmented Regulatory Structures

A key contributor to the complexity of the Reform Act is the existence of different sets of standards and requirements for different categories of institutions. The creation of multiple, disparate sets of rules to govern different categories of institutions is inherently complex, and a root cause of many of the problems currently being experienced. The current fragmented regulatory structure needs to be overhauled, and replaced with a consolidated system that is applicable to all non-degree and degree-granting institutions that require a full review and approval process, irrespective of whether the institutions offer non-degree or degree programs, or both.

Abbreviated Timeframe to Obtain Full Approval

A second major problem with the Reform Act's structural framework is the abbreviated 9- to 12-month timeframe provided for the Bureau to make a determination as to whether to issue a new institution a full approval to operate or deny the institution's application.

During this interim period, new institutions are issued a temporary approval to operate. This limited timeframe contrasts sharply with the multi-year candidacy periods often imposed on institutions seeking accreditation. Additionally, institutions seeking accreditation are often required to be approved by the state for a period of time prior to becoming eligible for the accrediting agency's candidacy status. Accrediting agencies also sometimes require that an institution graduate a class of students prior to becoming eligible for accreditation. In combination, institutions are required to operate for a period of several years before they can be considered eligible for full accreditation. No similar requirements are applicable to the Bureau's approval process.

If the Bureau strictly enforced all of the state's current standards and requirements during an institution's first several months of operations, the Bureau would have to deny many more applications or issue large numbers of conditional approvals, which is not practicable. A timeframe longer than 9 to 12 months, following issuance of a temporary approval, is needed to enable to the Bureau to oversee a new institution as it matures and demonstrates its capability to fully comply with all of the state's standards and requirements. The Reform Acts needs to be restructured to provide a 2 to 3-year candidacy period for new institutions following start-up of operations and completion of the Bureau's first site visit. If the new institution is unable to demonstrate its capability to fully comply with all of the state's standards and requirements after a period of several years, then the Bureau would have a sufficient basis for issuing the institution a conditional approval to operate, or denying the institution's application.

Insufficient Sanctions or Penalties for Isolated Violations

A third major problem with the Reform Act's structural framework is the absence of sufficient sanctions or penalties that can be imposed in response to findings that an institution has, in a single or limited number of instances, violated a standard or requirement. Currently, in many individual student complaint cases where it is determined that a violation has occurred, the Bureau is unable to obtain a positive outcome for either the Bureau or the student. Also, the currently penalty structure does not provide a sufficient deterrent to future misconduct by industry participants. Because of these deficiencies, rather than following through with conventional progressive disciplinary actions, Bureau staff instead attempt to "leverage" the Bureau's approval authority to address the student complaints and violations that have occurred. These internal referrals are not subject to any specific standards or requirements. The somewhat arbitrary manner in which staff make such referrals, and with which other staff accept and act upon the referrals made, contributes to industry perceptions that the Bureau's enforcement activities are sometimes inconsistently applied. Also, this leveraging of the Bureau's approval authority to obtain concessions in connection with specific disputes contributes to

perceptions, as expressed by one industry participant, that the Bureau is operating a "legalized extortion racket."

In lieu of "leveraging" its approval authority to address alleged violations, the Bureau should issue formal warning letters, citations, and meaningful fines, or place institutions on probation, or suspend or revoke their approval to operate. The Bureau does not currently have statutory authority to issue formal warning notices. The Bureau has not adopted regulations that could allow the assessment of fines of up to $5,000, and has rarely used its current regulatory authority to assess fines of up $2,500. Although the Bureau has statutory authority to place an institution on probation for up to 24 months, after making a determination that the institution has deviated from the standards for approval, and giving the institution due notice and an opportunity to be heard, it has never done so. Instead, the Bureau has always opted to address violations through the reapproval process and, in selected cases, has issued a conditional approval to operate or denied an institution's reapproval application. When these types of actions are taken, the institution, rather than the state, bears the burden of proof in any associated administrative hearing procedure.

The link from enforcement back to the Bureau's approval process is not appropriate in many circumstances and can contribute to a variety of inconsistent practices. The availability of alternative processes (e.g., probation versus conditional reapproval) for the same circumstances necessarily invites inconsistency in the application of the law, and charges of favoritism based on personal relationships, political influence, convenience of the Bureau, or other factors.

Summary of Initial Recommendations

The following 77 recommendations address statutory, organizational, operational, financial, and other improvement needs. Some of the recommendations can be implemented without making major changes to the program's governing statutes or regulations, and without obtaining significant additional financial and staffing resources. Most, however, require substantive changes in at least one of these three areas.

A. Statutory Framework

Recommendation A-1: Overhaul the Reform Act.

B. Accredited Institution Exemptions

Recommendation B-1: Develop an Accredited Institution Exemption Pilot Project.

Recommendation B-2: Restructure the Partial Exemption from the Bureau's Approval Processes Provided for Non-WASC Regionally Accredited Institutions.

C. New Institution Application Reviews and Approvals

Recommendation C-1: Streamline and simplify current statutory, regulatory, and administrative requirements related to submission of new institution applications while concurrently strengthening and improving the frequency, timeliness, depth, breadth, and quality of the Bureau's site review processes.

Recommendation C-2: Require employer letters only where necessary and appropriate.

Recommendation C-3: Hold workshops periodically in the state's major metropolitan areas to provide industry representatives with application preparation training and assistance.

Recommendation C-4: Adopt a meaningful set of minimum financial standards.

Recommendation C-5: Establish a pool of outside financial or accounting experts to perform reviews of financial information.

Recommendation C-6: Require that applicants provide insurance or bonds that clearly demonstrate a financial commitment to the proposed new business venture.

Recommendation C-7: Use site review teams to supplement Bureau staff capabilities in most (or all) cases.

Recommendation C-8: Complete initial site reviews within 4 to 6 months of commencement of operations, with additional, follow-up visits completed as needed to verify that identified deficiencies are being addressed.

Recommendation C-9: Verify all Article 7 exemptions as part of the initial or follow-up site review, as appropriate.

Recommendation C-10: Increase new non-degree institution application fees to a level sufficient to fully fund the costs associated with performing new institution application reviews, site visits, and other related activities.

D. Additions and Changes

Recommendation D-1: Restore all redirected Non-Degree and Degree Unit Education Specialist Series positions through the FY2006/07 BCP process.

Recommendation D-2: Establish a fee for branch and satellite campus additions.

E. Regular and Unannounced Inspections

Recommendation E-1: Develop and implement a regular and unannounced inspection program as currently required by the Reform Act.

Recommendation E-2: Authorize additional staffing resources to enable the Bureau to perform several hundred additional 1- to 2-day site visits each year.

Recommendation E-3: Require the Bureau to include in its annual reports information regarding the number of regular and unannounced inspections completed, and the amount of time spent on-site performing these inspections.

Recommendation E-4: Increase annual fees as needed to fund the additional costs associated with performing these regular and unannounced inspections.

F. Reapprovals

Recommendation F-1: Develop an abbreviated reapproval application form that enables nearly automatic processing of reapproval applications, subject to completion of limited scope site visits, where necessary.

Recommendation F-2: Revise the statutes to clearly require completion of site visits in all cases where none have been performed since issuance of an institution's last approval to operate, while concurrently providing the Bureau discretion with respect to completion of site visits in other circumstances.

Recommendation F-3: Reduce reapproval application fees for degree-granting institutions and increase reapproval application fees for non-degree institutions.

G. Religious Exemption Program

Recommendation G-1: Modify the statutes to enable the Bureau to extend the term of religious program exemptions to two (2) to three (3) years, and re-set and standardize application and renewal fees consistent with this structure. Concurrently, establish a process for amending an approved exemption to add new programs during this period, and for assessing a fee for the costs of processing these amendments.

Recommendation G-2: Revise the statutes to more clearly delineate circumstances in which the Bureau has authority to request catalogs, course outlines, or other documentation that may be needed for purposes of determining whether a religious institution's programs are eligible for exemption.

H. Registration Program

Recommendation H-1: Overhaul the statutes governing the Registration Program to (1) restore the Short-Term Seminar Training category, (2) enable streamlining and simplification of program applications, (3) establish uniform standards and requirements for all program categories, (4) require periodic renewal of registrations, (5) enable registrations to be amended, (6) establish fees for initial registrations, amendments, renewals, and annual or bi-annual fees to fund ongoing program compliance monitoring, enforcement, and administrative costs.

Recommendation H-2: Consider exempting institutions that exclusively offer programs costing up to $1,000, versus the current $500 limitation, subject to requirements that the programs are terminal and that no loan or other financing programs will be provided.

Recommendation H-3: Publicize the availability of registration for qualifying programs along with the availability of an exemption for programs costing $500 or less, and encourage qualifying institutions to register their programs or obtain an exemption in cases where they are eligible to do so.

I. Certificates of Authorization

Recommendation I-1: Discontinue the COA Program in its entirety for Instructors. Minimum requirements and standards for Instructors should be set forth in statute or regulations, and non-degree-granting institutions should be required to comply with these requirements and standards. The Bureau should monitor institutions for compliance with the requirements and standards, and initiate corrective action, including enforcement and disciplinary actions, where warranted.

Recommendation I-2: Modify the provisions governing Director, Associate Director, Financial Aid Director, and Financial Aid Officer to provide the Bureau authority to accept alternate equivalent experience.

Recommendation I-3: Establish a process to permit renewal of the COAs so as enable to the Bureau to verify compliance with any applicable continuing education requirements.

Recommendation I-4: Restructure COA application fees to differentiate between initial and renewal applications, and established at a level consistent with the cost of processing these types of transactions.

Recommendation I-5: Require submission of fingerprints by new COA applicants (Director, Associate Director, Financial Aid Director, and Financial Aid Officer) so that the Bureau can verify the criminal history records of these applicants.

J. Agent Permits

Recommendation J-1: Amend the Reform Act to clearly authorize the Bureau to require submission of fingerprints from persons submitting agent permit applications.

Recommendation J-2: Adjust the Bureau's agent permit fee schedule to align the fees with the Bureau's actual costs related to obtaining summary criminal history information from the DOJ.

K. Unapproved Institution Enforcement

Recommendation K-1: Provide selected Bureau staff with access to (1) reverse and unlisted telephone number directories, and (2) Department of Motor Vehicle, Employment Development Department, and Franchise Tax Board records.

Recommendation K-2: Provide statutory authority for the Bureau to issue ticket-style citations.

Recommendation K-3: Increase the maximum amount of fines that can be assessed.

Recommendation K-4: Develop and implement an unlicensed activity proactive enforcement program.

L. Approved Institution Complaints and Investigations

Recommendation L-1: Provide statutory authority for the Bureau to issue formal warning notices.

Recommendation L-2: Clarify statutory authority for the Bureau to issue an order of abatement with a fine.

Recommendation L-3: Adopt regulations to enable the Bureau to impose larger fines for multiple student violations.

Recommendation L-4: Restore the Bureau's Senior Investigator positions.

Recommendation L-5: Revise the statutes to better delineate the Bureau's licensing and enforcement responsibilities and to place greater emphasis on disciplining institutions that deviate from the Reform Act's standards and requirements.

Recommendation L-6: Reduce documentation requirements for complaints that are resolved or closed without being referred for investigation.

Recommendation L-7: Develop and implement a plan for reducing the backlog of pending complaints.

M. Voluntary and Mandatory Arbitration Procedures

Recommendation M-1: Prepare and submit proposed voluntary arbitration program regulations and request funding to support the program's implementation.

Recommendation M-2: Amend Section 94877(f) of the Reform Act to clarify whether mandatory arbitration clauses are prohibited from being included in enrollment agreements for programs subject to Article 7.

N. Student Tuition Recovery Fund

Recommendation N-1: Repeal the statutory caps on STRF administrative expenditures.

Recommendation N-2: Adjust the STRF Program budget so that it is consistent with actual costs associated with administering the STRF Program, and make offsetting reductions to the 0305 Program budget.

Recommendation N-3: Require that the STRF repay at least $1 million to the 0305 Fund.

Recommendation N-4: Modify the statutes to enable crediting of assessments to the STRF Fund by type of program, rather than type of institution, so that assessments paid by students enrolled in non-degree programs at degree-granting institutions can be credited to the non-degree account, rather than the degree account.

Recommendation N-5: Increase the statutory cap on the maximum amount of funds that can be accumulated in the STRF degree account in order to provide a sufficiently large reserve fund to absorb a potential spike in claims resulting from closure of a degree-granting institution (e.g., $3 million, versus the current $1.5 million cap), and restore the STRF assessment for students enrolled in degree programs, but at a lower level that is consistent with ongoing costs of degree program-related STRF claims.

Recommendation N-6: Increase the STRF assessment for students enrolled in non-degree programs to a level sufficient to (1) fully fund the ongoing costs of non-degree program-related closures and associated claims, and (2) restore the Degree account and 0305 Fund for prior year administrative and claim payment costs that were improperly funded from these other sources.

Recommendation N-7: Provide budget authority to the Bureau to contract for one-time services to audit STRF liabilities and payments for all institutions over, at least, the past three (3) years. Results of the audit should be used by the Bureau to pursue collection of past due amounts, and to cite and fine institutions that have violated the law. If necessary, modify the statutes so that payment of a fine does not absolve an institution of responsibility to pay past due STRF assessments.

Recommendation N-8: Establish and implement (as part of the audit of STRF liabilities and payments) a procedure for refunding excess supplemental assessments that were credited to some institutions' STRF accounts in prior years, but are unlikely to be used within the next several years, if ever. If necessary, the Bureau and the California Association of Private Postsecondary Schools (CAPPS) may need to jointly agree to modify the settlement agreement controlling the release of these funds. Also, the Bureau may need to (1) obtain statutory or regulatory authority to issue the refunds and (2) encourage institutions to submit a claim for the amount that they are owed. Authority also should be provided for the Bureau to use the funds to pay STRF administrative costs in cases where the institutions have closed and the funds cannot be refunded.

Recommendation N-9: Authorize additional funding and staffing resources to enable the Bureau to perform ongoing STRF collection and remittance compliance monitoring functions. Two (2) to three (3) additional positions may be needed.

O. Annual Reporting

Recommendation O-1: Require institutions to separately submit their institutional financial report and their program-specific operational and performance data. The financial component of the annual reports should be required to be submitted within 90 days of the completion of the institution's fiscal year.

Recommendation O-2: Develop a single, uniform master set of program-specific profile and performance statistical data elements, and then apply as appropriate to the type of program involved (e.g., degree, non-degree, registration).

Recommendation O-3: Develop a system to enable all institutions to submit their annual report data electronically. The Bureau should review all reports for completeness, and validate the data provided for a significant random sample of institutions and programs each year (e.g., 20 percent).

Recommendation O-4: Develop a system to enable the general public to access institutional profile and performance information through the Bureau's web site.

Recommendation O-5: Obtain authorization for additional resources to develop and implement a restructured annual reporting program.

P. Biennial Financial Reporting

Recommendation P-1: Repeal the redundant biennial reporting requirement imposed on institutions subject to Article 7 requirements.

Q. Outreach and Education

Recommendation Q-1: Defer implementation of a new or expanded Outreach Program.

R. Veterans Education Program (Title 38)

Recommendation R-1: Continue efforts to obtain approval of a BCP to re-direct two currently authorized Education Specialist series positions to the Title 38 Program.

S. Bureau Annual Reports

Recommendation S-1: Revise the statutes governing the Bureau's annual reports to more specifically delineate the Legislature's expectations and requirements, including provision of workload and backlog statistics, and other program profile information, for each major component of the state's regulatory program.

Recommendation S-2: Require submission of the annual reports, including accompanying discussion of the Bureau's operational performance and plans for subsequent reporting periods, by October 31st of each year for the preceding fiscal year.

T. Complaint Disclosure

Recommendation T-1: Revise the statutes so that the Bureau is not required to disclose information regarding closed complaints in cases where it is unable to substantiate the merits of the complaint or whether a violation occurred.

Recommendation T-2: Adopt regulations governing complaint disclosures consistent with revised statutory requirements and the Department's recommended minimum standards for consumer complaint disclosure.

Recommendation T-3: Provide public access to complaint information through the Bureau's web site, following adoption and implementation of regulations governing complaint disclosures that are consistent with statutory requirements and the Department's minimum standards.

U. Transferability of Credits Disclosure

Recommendation U-1: Develop an alternate disclosure regarding the transferability of units and degrees for potential use by institutions in cases where the units or degrees earned in particular programs are somewhat, or very, likely to be transferable to other colleges or universities.

V. Bureau Organization and Staffing

Recommendation V-1: Restore the Bureau's aggregate authorized staffing levels to the levels that were authorized prior to imposition of the hiring freezes and vacant position sweeps that were imposed between 2001 and 2003, and provide funding for outside staffing resources for specialized services.

Recommendation V-2: Defer current plans to redirect scarce Education Specialist Series positions to the new Enforcement Unit.

W. 0305 Fund Revenues and Fund Condition

Recommendation W-1: Realign the current fee structure so that it is consistent with the Bureau's actual costs, and increase fees to a level sufficient to fund needed new institution site inspection, financial statement review, compliance monitoring, institution inspection, and unapproved institution enforcement activities.

X. Management Information and Fiscal Systems

Recommendation X-1: Restructure the CALSTARS revenue account structure to be more consistent with the more detailed revenue account structure used by the SAIL system.

Recommendation X-2: Periodically reconcile SAIL and CALSTARS revenue reports. As necessary, modify SAIL system revenue reporting to resolve any inconsistencies between the two systems.

Recommendation X-3: Continuously review SAIL records and management reports to ensure that data quality and integrity are maintained.

Recommendation X-4: Develop a structured plan for ongoing improvement to the SAIL system's management reporting and functional capabilities.

Chapter I

Introduction

A. Project Purpose and Scope 1
B. Technical Approach 2
C. Data Constraints 3

I. Introduction

SB 1544 (Figueroa) required that the Director of the Department of Consumer Affairs (DCA) appoint an Administrative and Operations Monitor (Operations Monitor) for the Bureau for Private Postsecondary and Vocational Education (Bureau). In response to this requirement, DCA solicited bids for performance of these services and awarded a contract to NewPoint Group, Inc.

The remainder of this section summarizes the purpose and scope of the Operations Monitor assignment and NewPoint Group's technical approach to performing the assessment. A summary of various data constraints and limitations, and their potential impacts on the assessment, is provided at the end of the chapter.

Subsequent chapters of this report are organized as follows:

Chapter	*Title*
II.	Program Evolution
III.	Current Program Profile
IV.	Initial Conclusions and Recommendations

A. Project Purpose and Scope

The Operations Monitor is required to assess the Bureau's administrative operations and the provisions of the Reform Act, and to submit an initial report of findings and conclusions to the Director of DCA, the Bureau, and the Legislature by October 1, 2005. A second, final report is required to be submitted by April 1, 2006.

The goals of the Operations Monitor assignment, as set forth in SB 1544, are to improve the Bureau's overall efficiency, effectiveness, and compliance with state laws, particularly with respect to the Bureau's approval, complaint, and enforcement processes. The scope of this assignment encompasses the Bureau's applicant review, school approval, revenue collection, and complaint and enforcement processes and procedures. SB 1544 specifically required review and assessment of all of the following areas:

- Relevant laws and regulations to identify revisions that would improve state regulation and maintain or improve student and public protection
- Quality and timeliness of application and approval processes
- Collection of fees
- Collection of information from, and the ability to disseminate information regarding, entities or persons regulated by the Bureau
- Quality, consistency, and performance of the Bureau's business processes, including complaint processing and investigation

- Complaint backlogs
- Consistency in the application of sanctions or discipline imposed on regulated institutions and persons
- Capabilities to perform outreach to prospective students of private postsecondary and vocational education institutions.

The statutory provisions governing the Operations Monitor assignment become inoperative on April 1, 2006, and expire on January 1, 2007 (unless extended before that date).

B. Technical Approach

Major tasks performed as part of this assessment included:

- Review of the Private Postsecondary and Vocational Education Reform Act, and related regulations
- Review of recent amendments to the Reform Act, including:
  - AB 201 (Wright, 2001)
  - AB 2967 (Wright, 2002)
  - SB 364 (Figueroa, 2003)
  - SB 967 (Burton, 2003)
  - SB 1544 (Figueroa, 2004)
- Collection and review of reports prepared previously by the Bureau, the Council for Private Postsecondary and Vocational Education (Council), the California Postsecondary Education Commission (CPEC), CSUS Foundation, Price Waterhouse, the California Bureau of State Audits (BSA), the Department of Consumer Affairs' Internal Audits Office, the California Research Bureau, the Joint Legislative Sunset Review Committee, and the U.S. Department of Education, Office of Inspector General
- Conduct of interviews with all of the following:
  - The DCA's Director, Chief Deputy Director, and Deputy Director for Bureau Relations, and selected Department executives under prior administrations
  - Representatives of DCA's Office of Fiscal Services, Internal Audits Office, and Office of Legal Affairs
  - Representatives of the State and Consumer Services Agency
  - Senate Business and Professions Committee staff
  - Representatives of the California Department of Justice, Consumer Protection Division
  - All of the Bureau's current managers, including the Bureau's Chief, Assistant Chief, Non-Degree Section Managers, Degree Section Manager, and the selected Bureau managers under prior administrations
  - Nearly all Bureau staff, either individually or in small groups
  - Representatives of selected industry group and institutions, including the California Association of Private Postsecondary Schools (CAPPS), Corinthian Schools, MTI Colleges, Phoenix Schools, and Western Career College
  - The Executive Director of the California Postsecondary Education Commission
  - Representatives of other state regulatory agencies with overlapping regulatory responsibilities, including the Board of Registered Nursing, Board of Vocational Nursing

and Psychiatric Technicians, Board of Behavioral Sciences, and Board of Barbering and Cosmetology.
  - The Executive Director of the Western Association of Schools and Colleges
  - The Senior Legal Counsel of the Los Angeles County Legal Aid Foundation.
- Collection and analysis of historical and current fiscal year revenue and expenditure data for each of the Bureau's program funds
- Collection and analysis of historical and current organizational structure and staffing information
- Collection and analysis of historical and current fiscal year workload data for each of the Bureau's major business processes, including non-degree institution application processing, degree institution application processing, certificate of authorization application processing, agent permit application processing, complaint processing, and administrative actions
- Detailed review of 20 recently closed complaint files
- Collection and review of documentation pertaining to the Veterans Education Program, including contractual agreements with the U.S. Department of Veterans Affairs and reports prepared by the Department of Veterans Affairs' Joint Peer Review Group (JPRG)
- Assessment of each of the Bureau's major business processes, and the statutes and regulations governing these processes.

C. Data Constraints

To accomplish the purposes of this assessment, we requested and received a large number of listings and accompanying statistical data that were derived from information maintained in the Bureau's SAIL system. The SAIL system was developed and implemented by Bureau staff, and contains a tremendous amount of information regarding all of the Bureau's approved institutions, application and complaint processing, and fee collections that would not otherwise be available.

The SAIL system was developed in stages. As a result, not all of the system's components have been operational for the same amount of time. Also, prior year data from predecessor systems was not always available to be uploaded into SAIL. As a result, in some areas as many as seven (7) years of data are available versus only two (2) to three (3) years of data in other areas. In cases where data were uploaded from predecessor systems, the data were not always fully scrubbed. Consequently, in some areas, the data from prior years may not be as reliable as data from more recent periods.

The SAIL system was our primary source for workload and other non-financial profile information concerning each of the Bureau's programs. We also relied upon the SAIL system for detailed revenue information that is not otherwise available through the DCA's budgeting and accounting system (CALSTARS).

In many cases, the SAIL reports provided to us had never previously been prepared. We reviewed all of the reports provided in an effort to identify any significant

inconsistencies or anomalies that might suggest the data provided was not valid or reliable. Where such problems appeared significant and could be traced to a problem with the preparation of the reports, revised or additional reports were requested and provided. Minor inconsistencies or anomalies in the data generally were not reconciled or corrected. Had the data been reconciled or adjusted, it is unlikely that it would have affected the results of the assessment.

One significant inconsistency with the SAIL reports that we were unable to reconcile or resolve involved the detailed revenue reporting that we were provided. Currently, the Bureau's cash receipts are cashiered into the SAIL system, and are assigned detailed transaction type codes at that time. Summary-level revenue reports are then printed from the SAIL system and the data from these reports is then input into a separate DCA Oracle system. Subsequently, the Oracle data is uploaded to CALSTARS. The Oracle and CALSTARS revenue data are required to balance with the actual amount of the cash receipts that are deposited. However, the revenue information that is accumulated in the SAIL system has never been reconciled with the revenue information accumulated within either the Oracle or CALSTARS systems.

The SAIL system revenue reports provided to us show somewhat different total annual revenues than the CALSTARS reports covering the same periods. It is difficult to reconcile the data from the two systems because the categorizations used by the SAIL system are much more detailed and do not easily map to the higher level categorizations used by CALSTARS. As a result, we were unable to determine the causes of the differences in the aggregate amounts reported.

For each of the past two (2) fiscal years, the SAIL reports provided to us show that about $100,000 more in revenues were collected than were actually received as determined from the CALSTARS reports. The SAIL reports also show higher revenues than CALSTARS for 2001/02 ($141,000), but show lower revenues than CALSTARS for 2002/03 (-$56,000). As a percentage of total revenues, all of these amounts are relatively small (i.e., 1 to 3 percent), but the amounts are sufficiently large on an absolute basis that, depending on the cause of the differences, our findings regarding specific Bureau fees could be impacted. However, we do not believe that such differences would impact our overall conclusions or recommendations regarding the Bureau's fee structure.

The SAIL system workload data provided to us also contained various data anomalies that could not always be explained, such as sudden changes in the number of applications received or approved. To perform this assessment, we avoided relying on information from a single year wherever possible so as to reduce the risk of inadvertently reaching an inappropriate conclusion based on anomalous data from a single year. Overall, we believe that the workload data provided to us was sufficiently reliable for the purposes for which it has been used, although the data may not be perfectly accurate in all areas.

In summary, we found the Bureau's SAIL system to be an invaluable resource to us for purposes of performing this assessment, and that it is a powerful and useful system that will enable management and oversight authorities to monitor the status, and plan and manage the activities, of the Bureau on a going forward basis. However, needs exist to periodically reconcile the SAIL revenue reports with related CALSTARS information, and to continuously review SAIL records and management reports to ensure that system data quality and integrity are maintained. Additionally, it would be beneficial if the Bureau's CALSTARS revenue accounts were restructured consistent with the more detailed revenue account structure used by the SAIL system.

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Chapter II

Program Evolution

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II. Program Evolution

This chapter summarizes the history of the state's regulation of private postsecondary and vocational education institutions and provides an overview of the major provisions of the California Private Postsecondary and Vocational Education Reform Act of 1989, as amended, and re-enacted and re-numbered during 1997 and 1998. The chapter is organized as follows:

Section	*Title*
A.	Initial Regulation of Private Postsecondary and Vocational Education Institutions
B.	1989 Reform of Private Postsecondary and Vocational Education Regulation
C.	1995 CPEC Evaluation of the Reform Act
D.	1996 Analysis of Council Workload and Staffing
E.	1997 Extension of the Reform Act and Creation of the Bureau for Private Postsecondary and Vocational Education
F.	1997 Price Waterhouse Transition Report
G.	2000 Bureau of State Audits Review
H.	2002 DCA Internal Audits Office Review
I.	2002 Sunset Review
J	2003 Legislative Initiatives (SB 364 and SB 967)
K.	2004 Special Hearing Before the Joint Committee on Boards, Commissions, and Consumer Protection
L.	2004 Leadership Change and Appointment of an Internal Monitor
M.	2004 Sacramento Bee Investigation
N.	2004 Extension of the Reform Act and Appointment of an Independent Monitor
O.	January 6, 2005, Special Hearing Before the Joint Committee on Boards, Commissions, and Consumer Protection
P.	January 30, 2005, *60 Minutes* Report
Q.	March 1, 2005, Bureau Report on Staffing and Fees

A. Initial Regulation of Private Postsecondary and Vocational Education Institutions

Prior to 1990, the Superintendent of Public Instruction, in consultation with a 14-member Advisory Council for Private Postsecondary Educational Institutions, had responsibility for regulation of private postsecondary and vocational educational institutions under the Private Postsecondary Education Act of 1977. The Superintendent's regulatory duties were performed by the Private Postsecondary Education Division within the State Department of Education. There were six categories of degree-granting institutions and four categories of non-degree-granting institutions. The Act allowed accreditation by national accrediting associations recognized by the U.S. Department of Education in lieu of state review and oversight for licensure purposes. The Division also delegated approval of vocational institutions to independent accrediting agencies without establishing any compliance requirements.

During this period, some of California's private postsecondary and vocational education institutions began issuing degrees and diplomas that were of questionable value. By the late-1980s, the state had developed a reputation as the "diploma mill capital of the world." Almost any type of degree or diploma could be "purchased," irrespective of any other consideration. There also was widespread abuse of financial aid programs and in some schools' recruiting practices wherein students were enrolled irrespective of their ability to complete the course work, benefit from the instruction or training provided, or obtain employment in the area for which the training was intended.

B. 1989 Reform of Private Postsecondary and Vocational Education Regulation

During 1989, as a result of concerns about the integrity and value of the degrees and diplomas issued by private postsecondary and vocational schools, widely varying standards, the lack of enforcement provisions, and the exemptions from state oversight authorized in statute, a comprehensive reform bill was enacted. The overall intent of the *Private Postsecondary and Vocational Education Reform Act of 1989*[1] was to promote integration of private postsecondary education into other aspects of California's educational system and to improve the quality of the programs and services provided while providing protection from substandard operations or fraudulent practices. To accomplish its purposes, the Reform Act transferred responsibility for regulation of the state's private postsecondary and vocational education institutions to a 20-member Council for Private Postsecondary and Vocational Education (Council), the majority of which were state officials or representatives of the public. The Reform Act also authorized the establishment of licensing and other fees to fund the Council. The transfer of responsibility from the Department of Education to the Council was completed over a one-year transition period.

The Reform Act established separate approval processes for non-degree-granting and degree-granting private postsecondary and vocational education schools, colleges, and universities, but also fully exempted certain categories of institutions from these requirements, including:

- Institutions exclusively offering instruction at any level from preschool through grade 12[2]
- Institutions exclusively offering avocational or recreational education[3]
- Trade, business, professional, or fraternal organizations offering educational programs solely for the organization's membership[4]
- Institutions established, operated or governed by the state, any political subdivision of the state, or the federal government[5]
- Institutions offering continuing education where the institution or program is approved, certified, or sponsored by (1) a government agency, other than the Bureau, that licenses persons in a particular profession, trade, or job category, (2) a state-recognized licensing

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[1] SB 190, Morgan. The Reform Act has been amended a number of times since 1989. Additionally, the Reform Act was re-enacted and re-numbered in 1997 and 1998. Most of the Reform Act's initially enacted provisions have not been changed by subsequent legislation. This overview summarizes and references the Reform Act's currently applicable provisions. Subsequently, we highlight areas where significant additions or changes to the statutes were adopted.

[2] California Education Code, Section 94739(b)(1)

[3] Section 94739(b)(2)

[4] Section 94739(b)(3)

[5] Section 94739(b)(4)

body that licenses persons in a particular profession, trade, or job category, such as the State Bar of California, or (3) a bona fide trade, business, or job category[6]

- Nonprofit religious institutions with respect to educational programs pertaining to the principles, beliefs, and practices of the religious denomination or organization[7]
- Public community colleges and universities accredited by the Western Association of Schools and Colleges (WASC)[8]
- WASC-accredited not-for-profit institutions operating as a nonprofit public benefit corporation[9]
- WASC-accredited, for-profit institutions that exclusively confer degrees upon completion of a course of study of two (2) or more years[10]

Individual flight instructors not having an established place of business other than their residence also were fully exempted from the Reform Act provided they do not negotiate formal contracts of indebtedness or require any advance payments.[11]

Exemptions from some, but not all, provisions of the Reform Act also were provided for:

- Flight instruction schools certified by the Federal Aviation Administration that were operating in California on December 31, 1990[12]
- Institutions accredited by U.S. Department of Education approved national accreditation organizations that exclusively confer degrees upon completion of a course of study of two (2) or more years, have operated in the state for at least 15 years, have offered a masters, doctoral, or post-doctoral degree program for at least five (5) years, are incorporated and operating as a nonprofit public benefit corporation, and meet other requirements and standards as set forth in the Section 94750 of Article 3 of the Reform Act.

The Reform Act also provided a partial exemption for Short-Term Seminar Training. Short-Term Seminar Training was statutorily defined as an educational offering consisting of either (1) 50 hours of instruction, or less, costing less than $500, or (2) instruction approved by a governmental licensing authority to be offered exclusively as continuing education in subjects that licensees are required to complete as a condition of continued licensure. The definition for Short-Term Seminar Training specifically excluded license exam preparation courses.

In lieu of submitting an application for an approval to operate, institutions offering Short-Term Seminar Training were required to submit specified documentation to the Council on an annual basis, including copies of all advertising and promotional materials,

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[6] Section 94739(b)(5)

[7] Section 94739(b)(6)

[8] Section 94739(b)(7)(A)

[9] Section 94739(b)(7)(B)

[10] Section 94739(b)(7)(C)

[11] Section 94930(c)

[12] Section 94930(a)(b)

including catalogs and brochures, and a signed declaration providing the name of the institution and the name and address of the institution's owner, principal officers, and agent for service of process in California. Such institutions were subject to selected provisions of the Reform Act involving institutional conduct, student protection, and enforcement for violations.

The Reform Act requires that all institutions offering a degree or diploma program designed to prepare students for a particular vocational, trade, or career field provide prospective students with a "school performance fact sheet" that discloses:

- The number and percentage of students that begin the institution's program and successfully complete the entire program.
- The passage rate(s) of program graduates on any licensing preparation examinations or any licensure or certification examinations required by the state for employment in a particular vocational, trade, or career field.
- The number and percentage of students who begin the program and secure employment in the field for which they were trained.
- The average starting wages or salary of graduates of the institution's program(s) if the institution makes a claim to prospective students regarding the starting salaries of its graduates or the starting salaries or local availability of jobs in a field.[13]

Minimum standards were not established with respect to any of these performance measures.[14]

The Reform Act also requires that all institutions provide a pro rata refund for students who complete 60 percent or less of a course of instruction[15]. Students who withdraw or fail to complete a course of instruction after completing more than 60 percent of the course of instruction are not entitled to any refund. Students are entitled to a full 100 percent refund only if a notice of cancellation is provided to the institution prior to or on the first day of instruction[16]. Such refunds are required to be paid within 30 days[17].

The Maxine Waters School Reform and Student Protection Act[18] was also enacted during 1989. Most of the provisions of the *Maxine Waters Act* are contained in Article 7 of the Reform Act. The *Maxine Waters Act* establishes minimum standards for the financial condition of an institution, course completion rates, post-graduate placement rates, enrollment agreements, refunds, enforcement procedures, and penalties. Various

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[13] Section 94816(a)

[14] Institutions subject to Article 7 are exempt from the requirement to provide prospective students with a "School Performance Fact Sheet." Instead, these institutions are required to provide prospective students with specified "disclosures" regarding the institution's completions and placements (Section 94859(a)(2)).

[15] Section 94820

[16] Section 04822

[17] Section 94824

[18] AB 1420, Waters

categories of institutions and programs were exempted from Article 7, either as part of the *Maxine Waters Act* or through subsequent amendments to the Reform Act, but are still subject to other applicable provisions of the Reform Act. Current exemptions from Article 7 requirements include:

- Educational services having a total charge of $1,000 or less, provided that no part of the total charge is paid from a governmental student financial aid program loan or grant[19]
- Institutions that enroll 100 or fewer students and that have no part of the educational service paid from a governmental student financial aid program loan or grant[20]
- Nonprofit religious corporations that have operated as such for at least five (5) years[21]
- Nonprofit public benefit corporations that have operated as such for at least five (5) years[22]
- Entrance exam preparation services related to entrance into a course of study at an accredited or approved college or university[23]
- License exam preparation services for licensure in a recognized profession, such as medicine, dentistry, accounting, or law[24]
- Continuing education services that licensees are required to complete as a condition of continued licensure[25]
- Educational services that offer training exclusively in the fine arts or performing arts (e.g., training to be an actor, dancer, author, singer, musician, painter, sculptor, photographer, or masseuse)[26]
- Educational services that offer training exclusively in body arts, such as body piercing or massage[27]
- Educational services that are exclusively offered pursuant to a contract between an institution and a high school, community college, or employer who has full responsibility for payment of all charges for the services[28]
- Educational services that confer a degree upon completion, extend over a period of at least two (2) academic years, and are scheduled to be completed in not less than 17 months.[29]

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[19] Section 94786
[20] Section 94785(a)
[21] Section 94785(c)
[22] Section 94785(c)
[23] Section 94790(c)
[24] Section 94790(d)
[25] Section 94790(b)
[26] Section 94790(f)
[27] Section 94790(f)
[28] Section 94790(h)
[29] Section 94790(a)(1)

Additionally, there are two separate exemptions from Article 7 for court reporting schools which, we understand, are the only types of schools that typically fulfill the following requirements:

- Educational services that confer a diploma upon completion, extend over a period of at least three (3) academic years, are scheduled for completion in not less than 27 months, and do not admit students more than four (4) times per year[30]
- Educational services that are more than 30 months in length where the total charge is paid in equal monthly installments over the entire length of the course not more than one month in advance.[31]

Finally, institutions offering instruction in how to prepare for, take, and pass civil service exams or other tests qualifying a student for employment with a government entity were exempted from most, but not all, of the provisions of Article 7 (i.e., the schools are required to perform specified testing of students before enrolling them in their program).[32]

Article 7 established the following minimum completion and placement rate standards:

- At least 60 percent of the students who began a course and did not cancel, and were original scheduled at the time of enrollment to complete the course during the reporting period, shall complete the course.[33]
- At least 70 percent of the students who complete the course within the reporting period must obtain employment in the occupations or job titles to which the course was represented to lead starting within six months after completing the course.[34]

Various categories of students are excluded from these calculations, such as students that are not able to complete the course due to death, disability, illness, pregnancy, military service, or participation in the Peace Corps or Domestic Volunteer service. On a combined basis, these standards require that, for every 100 non-excluded students who enroll in a program subject to Article 7, 42 (42 percent) must, within six (6) months, obtain employment in the occupation or job title for which the program was intended. These standards must be met for each program offered by the institution as well as for the institution as a whole.

If an institution subject to Article 7 fails to meet these standards and a determination is made that the failure was not caused by a violation of the Reform Act, the Bureau can require that the institution implement a program to achieve compliance with the standards. The program may include:

- Limitations on enrollment for specific courses of instruction

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[30] Section 94790(e)

[31] Section 94790(g)

[32] Section 94787

[33] Section 95845(a)

[34] Section 94845(b)

- Revision of admission policies and screening practices to ensure that students have a reasonable expectation of completing courses and obtaining employment
- Increased academic counseling and other student support services
- Improved curricula, facilities, and equipment
- Revisions to the qualifications and number of faculty
- Improved job placement services
- Submission of a compliance report prepared by an independent certified public accountant attesting to the institution's compliance with the minimum requirements
- Any other reasonable procedure required by the Bureau.[35]

If the failure was the result of a violation of the Reform Act, the Bureau is required to order the institution to either cease offering the program at the campus where the program was offered or revoke the institution's approval to operate, or approval to operate the branch or satellite campus where the programs were offered, as appropriate.[36]

Institutions that are subject to Article 7 must disclose to prospective students, if the course of instruction has been offered, the following data:

- The percentage of students completing the program[37]
- The passage rates of graduates on any licensure or certification examinations required by the state for employment in a particular occupation or job title, if the institution makes representations[38]
- The percentage of students who completed the program and obtained employment in the occupations or job titles for which the program is represented to lead[39]
- If the institution makes any express or implied claim regarding the salary that may be earned following completion of the program, the percentage of students completing the program who earn salaries at or above the level claimed by the institution, the ranges of salaries earned by students after completing the program (in $200 increments), and the number of students in each salary range.[40]

In contrast to the requirements of Section 94820 under which there is no requirement to provide refunds to students who withdraw after completing 60 percent of a course of instruction, institutions that are subject to Article 7 are required to provide a pro rata refund to students irrespective of when the withdrawal occurs.[41] Additionally, in some circumstances institutions that are subject to Article 7 are required to provide 100 percent refunds if withdrawal occurs within a proscribed time period after the student has begun attending classes.

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[35] Section 94854(f)

[36] Section 94854(g)

[37] Section 94859(a)(2)(A)

[38] Section 94859(a)(2)(B)

[39] Section 94859(a)(2)(C)

[40] Section 94859(a)(2)(D)

[41] Sections 94869 and 94870

C. 1995 CPEC Evaluation of the Reform Act

During 1995, pursuant to provisions of SB 190, the California Postsecondary Education Commission (CPEC) conducted an evaluation of the effectiveness of the Reform Act and its implementation by the Council. The scope of the CPEC's assessment included review and evaluation of:

- The effectiveness of Reform Act in protecting the integrity of degrees and diplomas issued by private education institutions.
- The appropriateness of the Council's delegation of its regulatory responsibilities to boards within the California Department of Consumer Affairs, the California Department of Health Services, the California Committee of Bar Examiners, and the Federal Aviation Administration.
- The appropriateness of the exemption for WASC-accredited colleges and universities, and the effectiveness of the WASC in responding to student complaints.
- The effectiveness of the Reform Act in protecting students from unfair practices and in promoting the financial integrity of institutions operating in California.

CPEC reported that, during 1994, Council staff completed approximately 250 initial approval site reviews and 1,200 reapprovals of non-degree institutions. Additionally, visitation teams were used to complete 30 initial approval site reviews and 90 reapproval site reviews of degree institutions.

CPEC determined that:

- The Council was "one of the most rigorous regulatory agencies in the nation" and "enforces some of the most aggressive consumer and student protection provisions in the nation ..."
- The number of complaints filed regarding the quality of degree-granting institutions had "declined significantly" (e.g., by more than 40 percent from 1992 to 1993).
- Media reports regarding California's diploma mill operations had "essentially ceased."

The CPEC report also disclosed that a number of institutions had closed, including 159 that were closed as a result of Council action. However, CPEC noted that a number of factors may have contributed to these closures, including additional federal requirements, changes in accrediting standards, and the impacts of the state's early-1990s recession. CPEC concluded that "the overwhelming majority of school closures in the recent past (were) a function of forces external to the Council's activities."

CPEC concluded that the Reform Act protected consumers and the integrity of degrees and diplomas offered by postsecondary institutions, and that the financial responsibility provisions of the Reform Act ensured the financial integrity of approved institutions. Consistent with these conclusions, CPEC recommended that the Reform Act and the Council be "continued indefinitely" by repealing the Reform Act's sunset provisions which provided for its repeal on June 30, 1997.

Exhibit 1, starting on page 18, provides a summary of the CPEC's other significant findings, conclusions, and recommendations pertaining to a broad range of policy and operational issues concerning this regulatory program. Nearly all of these issues continue to be relevant to the state's regulatory program today.

The CPEC report also provided industry profile data for 1994. **Table 1**, below, shows the number of schools, enrollment, and number of degrees and certificates awarded by various categories of institutions for this period as presented in the CPEC Report.

Table 1
Profile of California Postsecondary Education Institutions - 1994

Type of Institution	*Number of Schools*[1 2]	*Estimated Enrollment*[3]	*Estimated Degrees and Certificates Awarded*[3]
Council-Regulated Institutions			
Private, Non-Degree	1,800	304,200	161,000
Private, 2- and 4-Year Degree	250	100,600	18,200
Out-of-State Degree	40	7,600	5,000
Total	**2,090**	**412,400**	**184,200**
Non-Council-Regulated Institutions			
WASC Private 2- and 4-Year Degree	112	212,000	48,144
California Community Colleges	107	1,155,398	78,474
California State University	22	319,368	68,073
University of California	9	162,304	42,823
Total	**250**	**1,849,070**	**237,514**

[1] Additionally, CPEC noted that there were (1) about 200 exempt WASC-accredited non-profit public benefit corporations that exclusively confer degrees upon completion of a course of study of two or more years, (2) about 70 exempt, degree-granting religious institutions, and (3) about 10 exempt, nationally-accredited institutions meeting other specified requirements.

[2] According to the Council's 1994 Annual Report, there also were nearly 120 approved Short-Term Training Seminar programs that were exempted from many of the Reform Act's provisions.

[3] The enrollment and degree/certificate figures are not adjusted for students enrolled at more than one institution or who received more than one degree or certificate. Also, some of the data appears to be based on estimates provided by the Council that were derived from self-reported, unverified 1993 annual report data furnished to the Council by only 70 percent of approved institutions. As noted by the Council in its 1994 Annual Report, the institutions that submitted these reports may not be fully representative of the entire population of schools.

Source: *The Effectiveness of California's Oversight of Private Postsecondary and Vocational Education*, California Postsecondary Education Commission, 1995

Table 1, on the previous page, shows that, during the mid-1990s, the Council was regulating and overseeing more than 2,000 private postsecondary educational institutions with an estimated total enrollment of more than 400,000 students. The total estimated enrollment at Council-approved non-degree institutions was equal to 26 percent of the total enrollment in the California Community College system. The total estimated enrollment at Council-approved degree-granting institutions was equal to 22 percent of the combined total enrollment in the California State University and University of California systems.

Exhibit 1 *(Page 1 of 2)*
Summary of Other Significant CPEC Findings, Conclusions, and Recommendations

- **The Reform Act** – CPEC found that the Act "is difficult to understand and follow" and is "... difficult to interpret ..." CPEC recommended that the Council "develop a legislative proposal to restructure the Act with the limited objective of clarifying the law for all parties."
- **WASC Exemptions** – CPEC concluded that WASC-accredited institutions were "providing students with a high quality educational experience." However, CPEC had concerns with a small number of these institutions that were experiencing relatively high student loan default rates, and recommended that the exemptions be withdrawn in cases where the institution's federal cohort default rate exceeds 20 percent. CPEC also recommended that WASC review its standards of accreditation to "ensure that the level of consumer protection – including the adequacy and fairness of complaint processes – at their member institutions is at least as rigorous as those protections provided to students attending Council-approved institutions."
- **Religious Exemptions** – CPEC found that some exempted nonprofit religious institutions were offering programs that were not strictly related to the institution's religious beliefs and practices, but were asserting that the programs were exempt from state oversight. CPEC recommended that the Act be amended "to clarify that only those degree programs exclusively involving religious teachings and beliefs be exempted from state oversight."
- **Nationally Accredited, Non-Profit Degree Program Exemptions** – CPEC cited its previous position that "nationally-recognized accrediting agencies' policies related to consumer protection and educational quality were not as stringent as those provided to students through the Reform Act." CPEC recommended that the Act be amended to "eliminate the exemption" for these institutions.
- **Standardization of Non-Degree and Degree Program Requirements** – CPEC found that some institutions were restructuring their programs (e.g., by converting non-degree programs to degree programs, or by converting for-profit entities to non-profit entities) to avoid having to achieve specified minimum completion and job placement rates and/or enable them to provide students with only a 60 percent, rather than 100 percent, pro rata refund if they withdrew from the program. CPEC recommended amending the Act to establish consistent standards for all programs "... regardless of whether they award a degree, certificate, or diploma, and regardless of whether they are offered by a profit or non-profit institution."
- **Non-Degree-Granting Institution Site Reviews and Data Audits** – CPEC found that the approval process for non-degree programs was "limited to a staff review of the institution's compliance with a check list of items" and that "no in-depth review of the institution's instructional programs (was) conducted and the quality of the program (was) assumed to be sufficient if the institution (had) a minimum 60 percent completion rate, a 70 percent placement rate and (met) the institutional requirements for approval." CPEC expressed concern about "relying *exclusively* upon these minimal requirements as indicators of quality, particularly since some of the statistics (were) self-reported and not regularly verified through an audit process of the Council." CPEC recommended that the Council explore ways to incorporate a qualitative review of these programs into the approval process and "to develop a process for verifying the accuracy of the institution's self-reported completion and job placement statistics."
- **Degree-Granting Institution Site Review Standards** – CPEC found a high level of concern and frustration among institutional representatives regarding the judgments made by visiting team members pertaining to the 15 different review areas that are required to be assessed to determine whether a degree-granting institution has the capability to deliver a quality educational program. CPEC recommended that the Council "... engage in a broad-based discussion to better define the requirements for obtaining approval to operate as a degree-granting institution and to use these minimum requirements to make program approval decisions." CPEC also recommended that the Act be amended to "delete the requirement that the Council's approved standards not exceed WASC accreditation standards because the standards serve different purposes."

(continued on next page)

Exhibit 1 *(Page 2 of 2)*
Summary of Other Significant CPEC Findings, Conclusions, and Recommendations

- **Out-of-State Operations Reviews** – CPEC determined that the Act required that the Council review all operations of an institution, both within and outside of California, but that the Council's regulations could be construed as limiting the reviews to only an institution's in-state operations. Also, the Council had not completed any out-of-state institutional reviews. To ensure that California-approved institutions were meeting the state's standards, CPEC recommended that the Council's regulations be amended "... to require that all private institution operations – both those within and outside the State – be reviewed by the Council prior to an institution receiving approval to operate ..."
- **Non-WASC-Accredited Institution Reviews** – CPEC found that the Council had not reviewed any out-of-state accredited institutions which, at the time, were subject to separate approval requirements. CPEC questioned the need for a different set of approval standards for these institutions, but withheld any recommendations pending review of these institutions by the Council
- **Institutions Offering Distance Learning to California Residents** – CPEC found that the Act did not clearly enable the state to regulate businesses that were located outside of the state, but which continued to provide educational services within California through correspondence courses, electronic media, and other forms of distance learning. CPEC recommended amending the Act to provide the same level of protection to residents obtaining instruction from institutions located outside the state as provided to residents obtaining instruction from institutions located within the state, and that the Council "... explore collaboration with regulatory agencies in other states for the purpose of ensuring consumer protection in postsecondary education in California."
- **Unlicensed Activity Enforcement** – CPEC found that there were potentially "up to 1,000" unapproved institutions operating in the state, and that the Council lacked the enforcement powers or punitive measures needed to address these violators short of requesting prosecution by local District Attorneys. CPEC recommended amending the Act "... to provide the Council with the authority and other resources to ensure all institutions operate in compliance with the Act."
- **Dual Licensure and Approvals** – CPEC found that the Council had developed agreements with various boards and bureaus within the Department of Consumer Affairs, the Department of Health Services, the FAA, and the California Committee of Bar Examiners under which the agency sharing jurisdiction had responsibility for overseeing the occupational curricula of the institution, with the Council overseeing the institution's compliance with other applicable requirements. CPEC concluded that dual jurisdiction appeared to be effective and efficient, with both parties cooperating in oversight activities and the processing of complaints. However, to reduce regulatory burdens on private postsecondary education institutions, CPEC recommended that the Council review its regulatory requirements to determine whether they could be "aligned or better coordinated with the requirements of other ... agencies." CPEC also recommended that the Council "discuss the desirability of seeking approval to serve as an accrediting agency recognized by the U.S. Secretary of Education ..."
- **Communications, Training, and Technical Assistance** – CPEC recommended that the Council improve its communications with institutions, provide increased training for team members conducting reviews of degree institutions, and provide training to all staff to enhance professional expertise and ensure greater understanding of the law. CPEC also recommended that the Council assume "a greater and more aggressive technical assistance role in providing institutions with advice, suggestions, and recommendations on ways that they may improve their services."
- **Public and Exempt Private Institution Completion and Placement Rate Data** – CPEC recommended that all public and independent post-secondary institutions (e.g., community colleges and exempt private institutions) "disclose information on the graduation/completion and employment placement rates of students enrolled in their vocational education programs ..."
- **Other** – CPEC recommended reducing the size of the Council and continuing its practice of delegating initial approval decisions to staff. CPEC also recommended that the Council streamline its school closure and appeals process.

D. 1996 Analysis of Council Workload and Staffing

During 1996, the Council commissioned a workload and staffing analysis through California State University's CSUS Foundation. The study was performed by Dr. Dennis Tootlelian, a marketing professor at CSU, Sacramento, and Director of the Business School's Center for Small Business and Center for Management Services.

At the time that this study was performed, the Council had about 50 authorized positions, including 15 to 20 positions assigned to the federally-funded Veterans Education Program (Title 38) and the Council's Administrative Office. A total of 33 positions were included in the scope of the study. These positions were allocated among four separate business units, as follows:

Table 2
1996 Council Staffing
Excluding Title 38 and Administrative Office Positions

Business Unit	*Permanent Positions*
Non-Degree-Granting School Division	14
Degree-Granting School Division	5
Student and Consumer Protection Division[1]	11
Legal Services Division	3
Total *(excluding Title 38 and Administrative Office staff)*	**33**

[1] Includes two (2) General Auditor positions and two (2) Senior/Special Investigator positions.

The staffing analysis was based on the following average annual workload volumes data that were derived from statistical data covering the previous two fiscal years (1994/95 and 1995/96) in conjunction with time-by-activity data collected through various surveys of staff, and unverified estimates provided by staff of the amount of time needed to process each of the above types of applications. **Table 3**, on the next page, shows the average annual workload volume assumptions that were used for purposes of this analysis. Results of this study showed a need to increase staffing for the Council to 69 positions, excluding staffing requirements for the Title 38 Program and for the Council's Administrative Office.

Table 3
Average Annual Application Workload Volumes
1994/95 through 1995/96

Type of Application	*Non-Degree*	*Degree*
New Institution	304	35
Reapproval[1]	447	95
Add Course	100	47
Change Location	96	14
Add Branch	18	9
Change of Ownership	43	5
Other Changes	26	1

[1] The value shown for non-degree reapproval applications is an average of 592 reapproval applications for 1994/95 and 301 reapproval applications for 1995/96. No explanation was provided as to the reasons for this large variance. At the time of the study, the term of approval for non-degree institutions was limited by statute to a maximum of three (3) years.

E. 1997 Extension of the Reform Act and Creation of the Bureau for Private Postsecondary and Vocational Education

During 1997, the Reform Act's June 30, 1997, sunset date would have been extended by SB 2960 (Firestone and Campbell), but the bill was vetoed by the Governor as a result of concerns about (1) the level of fees required for compliance and the ability of small schools to pay these fees, (2) how Council staff were carrying out their responsibilities, and (3) the absence of an administrative appeals process. Subsequently, two urgency bills were enacted to extend the Reform Act's sunset date by six months to January 1, 1998.

Throughout this period, due to uncertainty regarding continuation of the state's regulatory program, Council staff were encouraged to seek other employment opportunities. Because the Council was unable to recruit new staff to fill the vacant positions, work backlogs began to accumulate. By the end of 1997, about 75 percent of Council staff had separated from the agency, and cartons of unprocessed applications had accumulated in the Council's offices.

In late-1997, AB 71 (Wright) was enacted. AB 71 created the Bureau for Private Postsecondary and Vocational Education within the Department of Consumer Affairs, transferred responsibility for administration of the Reform Act from the Council to the Bureau, and extended the Reform Act's sunset date to January 1, 2005.

Effective January 1, 1998, all of the Reform Act's provisions pertaining to Short-Term Seminar Training were repealed. Concurrently, new provisions were enacted that established registration requirements for the following five (5) categories of educational services:

Intensive English Language (IEL) – These educational services must be approved by the U.S. Immigration and Naturalization Service solely to provide English instruction to international students for a designated period of study in the United States. The students cannot be residents of California or citizens of the United States, and are not eligible for federal financial aid, including loans.

License Exam Preparation (LEP) – These educational services assist students to prepare for an examination for licensure. The category excludes civil service exam preparation courses.

Continuing Education (CE) – These educational services are continuing education courses or programs that are not exempted from the Act (i.e., institutions or programs that are certified by a government agency, other than the Bureau, that license persons in a particular profession, trade ,or job category, a state-recognized licensing body that licenses persons in a particular profession, trade, or job category, such as the State Bar of California, or a bona fide trade, business, or professional organization).

Short-Term Career Training (STC) – These educational services must cost $2,000 or less and be less than 250 hours in length. The services cannot lead to a degree, cannot be financed by a federal or state loan or grant, or be represented to lead to, or offered for the purpose of preparing a student for, employment as a certified nursing assistant (CNA). Subsequently, the CNA employment exclusion was extended to include employment as a private security guard or a private patrol operator.[42]

Short-Term Seminar Training (STS) – These educational services must cost less than $1,000 and be less than 100 hours in length. The services cannot (1) lead to a degree, or be financed by a federal or state loan or grant, (2) involve instruction in how to prepare for, take, or pass a licensing examination or other test qualifying a person for employment, or (3) be represented to lead to an occupation or job title.[43]

Institutions that qualify under any of the above criteria are required to complete a registration with the Bureau. The registration requires disclosure of specified information concerning the institution and its owners, principal officers, and agency for service of process within California. Also, the registration form or enrollment agreement that will be used to enroll students must meet specified requirements and be provided to the Bureau. The registrant must also provide the Bureau with a copy of their brochure or catalog, certificate of completion, and contract or financing agreement if third party financing for the cost of the services is provided.

The Bureau is not required to conduct a full-scale review and approval of the offering institution or programs as is required of non-degree-granting and degree-granting institutions. The Bureau may, at its discretion, complete site visits,[44] but has rarely, or never, utilized this authority. The Bureau also may, at its discretion, require registered institutions to reverify all or part of their registration information at least every three years following their initial registration,[45] but has rarely, or never, utilized this authority.

Registered programs are exempt from Article 7 (*Maxine Waters Act*). Registered programs also are exempt from Article 10 pertaining to the Bureau's general authority to establish and collect fees. Authority to establish fees for registered programs is separately set forth in Article 9.5.[46]

The provisions of AB 71 became effective on January 1, 1998, at which time the Bureau assumed full responsibility for regulation of the state's private postsecondary and vocational education institutions pursuant to the Reform Act of 1989 (as amended). Only

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[42] When the Reform Act was initially enacted, private security guard and patrol operator training were fully exempted from the Act if (1) the training was approved by the Bureau of Security and Investigative Services, (2) the total cost of the training was less than $750 and was not financed by a federal or state loan, and (3) the service was less than 75 hours in length.

[43] SB 1544 (Figueroa) repealed the definition of Short-Term Seminar Training effective January 1, 2005.

[44] Section 94931(e)

[45] Section 94931(h)

[46] Section 94931(e)

about 15 Council staff eventually transferred to the Bureau, and nearly all of these staff worked in either the Title 38 or Degree units. The Non-Degree Unit along with several other functionally-specialized business groups had to be rebuilt with entirely new staff.

The Bureau is headed by a Bureau Chief that is appointed by the Governor, subject to confirmation by the Senate. The Bureau Chief reports administratively to the Director of the Department of Consumer Affairs (Director) and performs delegated duties that are statutorily granted to the Director.

The Director also is required to appoint an Advisory Committee consisting of representatives of various stakeholder groups to advise the Bureau concerning its licensing, enforcement, and administrative functions.[47] Appointments were initially made to the Advisory Committee during 1998. The Advisory Committee met once during 1998 and a second time during 2000.

[47] Section 94771(e)

F. 1997 Price Waterhouse Transition Report

During August 1997, Price Waterhouse was retained by the Department of Consumer Affairs to perform a diagnostic review of the Council's processing cycles and internal accounting control structure. The diagnostic review identified significant internal control deficiencies which precluded performance of comprehensive testing of all of the Council's processing cycles. Accordingly, it was mutually agreed that Price Waterhouse would, instead, assess the Council's accounting procedures in selected areas, using agreed upon procedures. The areas included within Price Waterhouse's scope of work included:

- Annual fee billings and collections
- Renewal fee billings and collections
- STRF assessments and collections
- STRF claims and fund condition
- Balance sheet account balances
- Selected types of expenditures.

Price Waterhouse prepared their report solely for use by the Department. It is not evident that Council management was provided an opportunity to review the report or respond to Price Waterhouse's findings, conclusions, or recommendations. Nonetheless, the findings are helpful for purposes of understanding the condition of the program at the time that it was transferred to the Department. Anecdotal and statistical data subsequently provided to the Operations Monitor during the course of this assessment are consistent with all of Price Waterhouse's specific findings. Nearly all of these issues continue to be relevant to the state's regulatory program today.

Price Waterhouse reported to the Department that:

- Events leading to the Council's operations being transferred to DCA had disrupted virtually all of the functions of the Council.
- A significant number of Council staff had resigned within the past year and their vacant positions had not been filled.
- A shortage of staff had resulted in many important financial, technical, and administrative functions not being performed.

As summarized by **Exhibit 2**, on the next page, Price Waterhouse reported significant problems involving (1) annual fee collections, (2) renewal application fee collections, (3) STRF assessment collections, and (4) STRF claims processing and fund solvency. Price Waterhouse also identified problems in several other areas, including (1) segregation of duties within accounting functions, (2) the Council's database system, (3) schools' reporting of completion and placement rates, and (4) the Council's analysis and verification of information furnished by the schools for purposes of determining fee amounts and continued approval by the Council.

Exhibit 2 *(Page 1 of 2)*
Price Waterhouse Transition Report
Summary of Findings

Annual Fee Collections

- The Council did not have reliable current information on its schools for purposes of determining which schools were active or closed.
- 1997 annual fee billings were calculated based on school revenue data that was generally two years old because the standard forms used by the Council to obtain financial information form the schools had not been updated to request more current information.
- A significant number of schools had past due annual fees for 1996 and 1997.
- The Council did not have adequate staff to pursue collections of past due annual fees.
- Billed annual fee account receivables were overstated and not fully collected partially because of the Council's practice of billing schools and maximum annual fee ($5,000) during a new school's first year of operation or whenever a school failed to provide current income figures.

Renewal Application Fee Collections

- The Council had not billed schools for renewal application fees since March 10, 1997, for schools with approval periods ending in June or July of 1997, because the employee who prepared these billings had resigned and was the only employee that knew how to properly access related information needed from the Council's database system.
- No schools having an approval expiring on August 1, 1997, or later, had been billed or otherwise contacted by the Council regarding remittance of renewal application fees.
- The failure to bill for renewal application fees had resulted in a decline in renewal application revenues.
- Schools with past due reapplication fees were operating without a valid approval to operate.
- Fee submission had become increasingly reliant on the initiative of the schools since the Council was no longer billing the schools on a timely basis.

(continued on next page)

Exhibit 2 *(Page 2 of 2)*
Price Waterhouse Transition Report
Summary of Findings

STRF Assessment Collections

- A significant number of schools were not remitting quarterly STRF assessments.
- The amount of STRF assessment collections received from July through November 1996 had decreased by 54 percent from the amount received in the comparable prior year period and Council management were unable to explain the causes of this variance.
- The Council did not require schools to substantiate the underlying data used in calculating the amount of their STRF assessments.
- Lack of staff had limited the Council's ability to pursue unpaid STRF assessments.

STRF Claims Processing and Fund Condition

- School records were disorganized, missing, and difficult to access.
- There was a lack of information about many closed schools that appeared to pose a high risk of causing STRF claims.
- The Council lacked procedures to measure STRF claim exposure.
- An adequate analysis of the future solvency of the STRF was not being performed.
- There was a very real exposure that the STRF would become financially insolvent in the future.

Other Findings

- A proper segregation of duties within sensitive accounting functions was not occurring.
- The Council's database system was operationally fragile and not adequately documented.
- The Council did not have up-to-date financial or performance information from schools (e.g., course completion statistics, placement rates, etc.).
- Information furnished by the schools for purposes of determining fee amounts and continued approval by the Council was not consistently analyzed or substantiated.
- As of June 30, 1997, the aggregate balance for all of the Council's funds (Private Postsecondary and Vocational Education Administration Fund, STRF Fund, and Federal Trust Fund) was about $5.5 million. The STRF fund balance at that time was about $0.3 million.

G. 2000 Bureau of State Audits Review

During 2000, the Bureau of State Audits (BSA) conducted an audit of the Department of Consumer Affairs to determine whether the Department was properly overseeing its regulatory boards and bureaus. The scope of the audit also included an assessment of whether the boards and bureaus issued licenses and responded to consumer complaints effectively and in a timely manner, and whether the boards and bureaus had established adequate financial controls.

The BSA reviewed four boards and bureaus in detail — the Dental Board of California, the Contractors State License Board, the Bureau of Automotive Repair, and the Bureau for Private Postsecondary and Vocational Education — and surveyed another 31 boards and bureaus regarding the way that they perform their duties. The BSA found that the Department was not fulfilling its oversight responsibility over its boards and bureaus, and was allowing weaknesses in licensing and complaint processing to continue undetected.

The BSA's major findings pertaining to the Bureau for Private Postsecondary and Vocational Education included the following:

- The Bureau was taking longer than the year its regulations allow to issue a license (e.g., an average of 525 days for degree-granting institutions).
- Licensing staff were issuing licenses without completing required financial reviews, and were renewing licenses without completing required complaint history reviews.
- Applicants were charged application fees that were higher than the legally allowed rates.
- Bureau staff were not consistently mediating complaints that were received, had suspended processing of complaints that could not be mediated, and had not established timelines for processing complaints to ensure prompt resolution.

The BSA recommended that the Bureau for Private Postsecondary and Vocational Education:

- Develop an automated system to monitor the processing of license applications and consumer complaints.
- Develop policies and procedures to guide staff in processing license applications and consumer complaints.
- Ensure that all consumer complaints are investigated, especially ones that cannot be mediated.
- Continue to identify and reimburse institutions that are overcharged for licensing fees.

Following completion of this review, the Bureau stated that it had implemented a corrective action plan to address all of the BSA's recommendations.

H. 2002 DCA Internal Audits Office Review

During 2002, the DCA's Internal Audit Office conducted a review of the Bureau's programs and operations. The DCA audit recommended that the Bureau:

- Work with the DCA's eGovernment and Special Programs Division to address findings related to needs for modification of the Bureau's strategic plan that would assist management in measuring the success of its operations.
- Consistently use written application review and approval policies and procedures, provide staff training to reinforce the Bureau's application review and approval requirements, implement a policy to periodically monitor workload to ensure that application review and approval processing timeframe requirements are met, complete quality control reviews of completed institution files.
- Establish a process to ensure that all fees and assessments are collected and to take disciplinary action against non-paying institutions, develop written procedures for billing and collection processes, and continue with development of a revenue-tracking module within the Bureau's new SAIL management information system.
- Ensure payment of STRF claims in accordance with statutory requirements, reestablish STRF verification processes to ensure that all institutions are properly calculating and paying their STRF assessments, and complete adoption of proposed STRF regulations and, after the regulations become effective, ensure that outstanding balances are paid.
- Develop written complaint handling procedures, including processing timeframe goals, and procedures for complainant communication, disciplinary actions, case file records retention, and quality control review.
- Continue efforts to ensure that all approved institutions comply with the Bureau's annual reporting requirements, take disciplinary action against any non-complying institutions, and develop written procedures for reviewing financial and educational program information (as required by applicable statutes).
- Take actions needed to ensure that the new SAIL management information system complies with state IT project requirements, and develop requirements documentation for the system and a back-up plan to use in the event that staff developing and programming the system separate from the Bureau.
- Improve its policies and procedures related to enforcing eligibility requirements prior to issuing agent permits and certificates of authorization for service, including a module within the SAIL management information system for tracking agent permit applications that will enable monitoring of compliance with processing timeframe requirements, and ensure that the Bureau complies with the DCA's Criminal Offender Record Information (CORI) and Department of Justice (DOJ) requirements.

Following completion of this audit, the Bureau stated that it agreed with and had proposed specific corrective actions to address each of the audit findings.

I. 2002 Sunset Review

During 2002, the Bureau completed its first Sunset Review before the Joint Legislative Sunset Review Committee (JLSRC). As part of this review, the Bureau committed to the following actions:

- Recommend to and have the Director of DCA make appointments to and reestablish the Bureau's Advisory Board.
- Simplify and streamline the Bureau's appeal procedures.
- Sponsor legislation to amend current statutes and regulations to ensure comprehensive, efficient, and effective application approval procedures.
- Develop and propose regulations to implement a Bureau-operated voluntary arbitration program (as required by statute).
- Sponsor legislation to amend current statutes to improve the Bureau's capability to quickly initiate appropriate enforcement or disciplinary actions.
- Address deficiencies noted in the BSA audit pertaining to the Bureau's written procedures governing application processing, complaint handling, and other activities.
- Make needed statutory and regulatory changes required to ensure student protection and the quality of education in connection the use of Internet (on-line) education.

J. 2003 Legislative Initiatives (SB 364 and SB 967)

During September 2003, SB 364 (Figueroa) and SB 967 (Burton) were enacted. SB 364 required that the Bureau:

- Work with staff of the JLSRC and other stakeholders to streamline the Reform Act and eliminate contradictions, redundancies, ambiguities, and conflicting and unnecessary provisions (e.g., by having accreditation by regional accrediting bodies approved by the U.S. Department of Education replace some of the Bureau's approval requirements for degree-granting institutions, educational programs, and instructors).
- Determine, in conjunction with other stakeholders, what additional changes are needed to improve the effectiveness of the state's regulation of private postsecondary and vocational education, including the type and timeliness of information provided to the Bureau and the need for, and feasibility of, regulation of out-of-state postsecondary institutions that offer educational programs via the Internet.
- Determine the cost of meeting its statutory obligations, staffing requirements to meet those obligations, and whether the current fee structure supports these requirements, and report this information to the Director of DCA and to the JLSRC by October 1, 2004.
- Continue to make improvements to its data collection and dissemination systems to enable provision of improved reporting of information regarding the private postsecondary and vocational education industry, and improved monitoring of reports, initial and renewal applications, complaint and enforcement records, and fee collections.
- Expand its outreach program for current and prospective students, subject to first reporting to the Director of DCA and the JLSRC on its fees structure and revenues and, thereafter, upon the Director of DCA finding that the Bureau has sufficient revenues to fulfill its current obligations and that the costs of an expanded outreach program will not jeopardize the Bureau's capability to fulfill those obligations.
- Report to the Legislature on its progress in implementing the corrective actions needed to resolve the deficiencies identified in the BSA and DCA audits conducted during 2000 and 2002, respectively, including the status and timeliness of its complaint processing and enforcement, the status and timeliness of its application and renewal processes and procedures, the condition of the STRF and of any claims thereon, the status and capabilities of its data processing and dissemination system, its outreach efforts to current and prospective students, and any recommendations for improvements to its operations, including recommendations regarding revisions to the Reform Act.

SB 967 partially fulfilled one of the requirements of SB 364 by fully exempting all WASC-accredited institutions from the Reform Act. Previously, only WASC-accredited institutions that exclusively offered degree programs were exempted from the Reform Act.

SB 967 also modified the Reform Act's requirements related to approval of new degree, diploma, or certificate programs for approved non-WASC regionally accredited institutions. In lieu of Bureau approval of any new programs, approved non-WASC regionally accredited institutions are only required to provide a notification to the Bureau of the new program. If accrediting agency approval of the new program is required, the institution also is required to provide the Bureau with a copy of the accrediting agency's approval. Pursuant to SB 967, "no additional review or investigation of the program shall

be required by the Bureau."[48] SB 967 permits non-WASC regionally accredited institutions, at their discretion, to apply for approval to operate under the same processes as are required to be used by non-accredited institutions (Sections 94900 and 94915 for degree and non-degree-granting institutions, respectively).[49]

Because SB 967 exempted approved non-WASC regionally accredited institutions from (1) Section 94900 and 94901 which govern the Bureau's degree-granting institution application evaluation and approval processes, (2) Article 9 which, among other things, governs the Bureau's non-degree-granting institution application evaluation and approval processes, and (3) Article 9.5 which, among other things, governs the Bureau's registration program evaluation and approval processes, some Bureau staff believed that the Bureau no longer has statutory authority to evaluate or approve certain types of add/change applications for these institutions (e.g., add a new branch location or change the location of a previously approved main or branch location). In response to these circumstances, the Bureau essentially "froze" the approval status of non-WASC regionally accredited institutions, based on each institution's status as of the effective date of SB 967 (January 1, 2004). Consistent with this, although some non-WASC regionally accredited institutions subsequently provided the Bureau with notifications or updated information regarding new or changed branch locations, or other changes, the Bureau has not always updated the public information provided on its website to reflect the changes made.

For the past 20 months, the Bureau has been attempting to determine whether Section 94905(b)(5), which was intended to provide a simplified process for approval and reapproval of non-WASC regionally accredited institutions, or a branch or satellite campus, may be used to approve new branches or change branch locations in cases involving currently approved institutions. However, Section 94905(b)(5) cross-references to Sections 94802 which, in turn, cross-references to Sections 94900 and 94915, from which non-WASC regionally accredited institutions are exempt.[50] Similarly, for reapproval applications, Section 94905(b)(5) cross references to Section 94840 which, in turn, cross-references to Sections 94802, 94900, and 94915. As a result of these circumstances, there has been disagreement regarding the Bureau's authority to act upon these institutions' add/change and reapproval applications. These provisions also illustrate how the Reform Act sometimes "loops around on itself," and why the Reform Act is perceived as being complex and difficult to understand and implement.

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[48] Section 94905(c)

[49] See Sections 94905(b) and (e)

[50] Section 94802(c)

K. 2004 Special Hearing Before the Joint Committee on Boards, Commissions, and Consumer Protection

During June 2004, the Joint Committee on Boards, Commissions, and Consumer Protection held a special hearing regarding the Bureau. Issues and associated recommendations resulting from this review were as follows:

- The Reform Act needs to be revised to make it intelligible and enforceable.
- The sufficiency of the Bureau's revenues and staffing needs to be determined. The fee analysis required by SB 364 needs to be completed.
- The Bureau's regulatory scope should be realigned.
- The Legislature should consider using the STRF or other funding sources as "seed money" to assist students from closed schools transition to another institution to continue their educational program. Legislation also may be needed to better define the parameters within which the Bureau manages school closures.
- The Legislature should consider requiring institutions to adopt a records retention plan and to maintain student records in a prescribed format so that they can be retrieved in the event of a school closure.
- The Legislature should consider enacting simpler and more workable criteria for what qualifies as a "registered" institution.
- The Department and the Bureau, in consultation with others, should develop recommendations for providing oversight of out-of-state institutions offering Internet-based educational programs.
- Regulation of private postsecondary and vocational education institutions should be continued, but a thorough review of the regulatory structure and oversight responsibilities of the Bureau needs to be completed.
- The Department should appoint an Operations and Enforcement Monitor to complete an objective assessment of California's regulation of private postsecondary and vocational education institutions, including both the administrative operations of the Bureau and the provisions of the Reform Act.
- The Administration and the Department should consider restoring, at least temporarily, the Bureau's staffing resources to clear out existing backlogs.
- The Bureau should immediately begin meeting on a regular basis with its Advisory Committee.

L. 2004 Leadership Change and Appointment of an Internal Monitor

Beginning during May 2004, the DCA Director initiated a number of changes to address some of the problems being experienced by the Bureau. These changes included replacing the Bureau's Chief and designating the DCA's Deputy Director of Bureau Relations to serve as an Internal Bureau Operations Monitor to review the Bureau's operations. Subsequently, various studies were initiated to provide detailed information needed to evaluate the Bureau's workload and staff utilization, and the adequacy of the Bureau's fees. Additionally, Bureau staff and the DCA's Office of Legal Services were directed to prepare proposed regulations for the Bureau's disciplinary processes. The DCA also reconstituted the Bureau's Advisory Committee which had not met since 2000.

M. 2004 Sacramento Bee Investigation of the Bureau

Concurrent with the above efforts, on August 18, 2004, *The Sacramento Bee* published a special article that was written as part of a U.C. Berkeley Graduate School of Journalism class. The article strongly criticized the Bureau, and characterized the Bureau as "a passive consumer-protection agency that does little to monitor schools." Specific criticisms included the following:

- "The Bureau is slow to process new school applications, allowing some to operate for years without permanent licenses."
- "The Bureau spends little time evaluating the quality of the education schools offer."
- "When the Bureau looks into complaints, it rarely conducts field investigation or follow-up."
- "The Bureau doesn't monitor whether schools meet minimum graduation and job-placement rates required by law."

The article also quoted a senior attorney at the Legal Aid Foundation of Los Angeles as saying that, "Students complain, and they [the Bureau] do nothing about it" and "It [the Bureau] is totally worthless." Additionally, it was alleged that deficient practices identified by the BSA during 2000 continued and that annual reports that the Bureau is required to submit to the California Postsecondary Education Commission (CPEC) had not been submitted for several years.

N. 2004 Extension of the Reform Act and Appointment of an Independent Monitor

During September 2004, SB 1544 (Figueroa) was enacted. SB 1544 extended the Reform Act's January 1, 2005, sunset date by 2½ years to July 1, 2007. The decision to extend the Reform Act's sunset date by only 2½ years reflected the Sunset Review Committee's continuing concerns about (1) the state's overall structural approach to regulation of private postsecondary and vocational education institutions, and (2) the Bureau's administrative and operating performance. Some stakeholders had proposed, for example, that the Bureau's regulatory responsibilities be transferred to other state agencies or to a newly created quasi-public, not-for-profit organization that would be established for purposes of regulating certain types of institutions or educational programs.

SB 1544 exempted from the Reform Act any institution exclusively offering programs costing up to $500, and concurrently deleted the statutory definition of "Short-Term Seminar Training" which previously covered programs costing up to $1,000 that were less than 100 hours in duration. Thus, some previously registered Short-Term Seminar Training programs were exempted from the Reform Act while others lost their registration status and, presumably, were subject to the Reform Act's requirements governing non-degree institutions, including requirements related to applying for and obtaining an approval to operate.

O. January 6, 2005, Hearing Before the Joint Committee on Boards, Commissions, and Consumer Protection

On January 6, 2005, the Director of DCA provided an update on the status of the Bureau to the Joint Committee on Boards, Commissions, and Consumer Protection. This special hearing was prompted by the August 18, 2004, article published by *The Sacramento Bee*. During this hearing, the Director reported that the Bureau's operating performance had recently improved in several critical areas, including the number of completed application reviews, the number of complaint closures, the average timeframe needed to resolve complaints, the amount of STRF claims paid, the number of site inspections completed, and the number of administrative actions taken against institutions. The Committee also was informed that:

- The Internal Operations Monitor's review had been completed during November, and the results were expected to serve as a "Blue Print" for the Bureau's Chief and for the SB 1544 Operations Monitor.
- A new Complaint Handling & Compliance Unit had been established within the Bureau.
- DCA's Internal Audits Office had been assigned responsibility for reviewing the financial component of applications.
- An Improvement Plan had been prepared for the Bureau (a copy of this document was provided to the Committee).
- Outreach efforts had been planned for high schools.
- Collateral materials had been developed for handing out at upcoming community events that would be attended by Bureau staff.
- The Bureau's website would be enhanced to provide additional application tracking and status information.
- Staff had met with a subcommittee of the Bureau's Advisory Committee and were currently planning a meeting of the full Advisory Committee.
- A new strategic plan for the Bureau was being prepared.
- To enable improved monitoring, graduation and placement rate data would be added to the Bureau's database system following the 2004 reporting cycle.

Additionally, a newly appointed Bureau Chief (Ms. Barbara Ward) was introduced to the Committee.

Finally, during the hearing, DCA and Bureau staff acknowledged, along with some members of the Committee, that the Bureau had been "neglected" and/or "mis-managed" for many years, and that all of the Bureau's problems had not yet been addressed. For example, it was disclosed that 46 schools had been operating with a Temporary Approval for more than a full year, and that no site visits had been conducted to any of these institutions. Also, issues related to the need to overhaul the Reform Act and/or restructure the Bureau's regulatory responsibilities remained unresolved.

P. January 30, 2005, *60 Minutes* Report

On January 30, 2005, *60 Minutes* aired a report on private postsecondary vocational schools. The *60 Minutes* report focused on allegations that private postsecondary education institutions boost enrollment, and fees, by (1) falsely representing their program completion rates, job placement rates, and starting salaries, and (2) relaxing admission standards and admitting unqualified applicants. Additionally, it was alleged that the schools inflate their program completion rates by falsifying attendance records and grades. Finally, it was suggested that even if students are able to successfully complete their programs, they are unable realize any economic benefits in terms of job placement or higher salary levels. Instead, the students are saddled with large tuition loan repayment obligations that they are unable to service. No Bureau-approved institutions were featured in this report, although some state officials and student advocates believe such problems may extend to these institutions.

Q. March 1, 2005, Bureau Report on Staffing and Fees

SB 1544 (Figueroa) required that the Bureau (1) objectively assess the cost of meeting its statutory obligations, (2) determine the staffing necessary to meet those obligations, (3) determine whether the current fee structure allows for collection of revenue sufficient to support the necessary staffing. This information was initially required to be reported to the Joint Legislative Sunset Review Committee by October 1, 2004. Subsequently, SB 136 (Figueroa) extended this due date to March 1, 2005. The Bureau submitted its report to the Legislature on March 1, 2005.

To respond to the requirements set forth in SB 1544, the Bureau, with the assistance of personnel and budget staff from DCA, completed a two-week long workload study during which Bureau staff self-reported how much time they had spent in various program areas. Based on this information, estimates were prepared of the costs of the work performed. The cost information was summarized by program (degree, non-degree, and STRF), and then compared to available revenue information. The comparative analysis showed that:

- Non-degree program revenues were significantly greater than non-degree program costs
- Degree program revenues were significantly less than degree program costs
- The 0305 Fund was absorbing a significant amount of STRF administrative costs.

Results of the study also indicated that that the Bureau's 0305 Fund was insufficient to support ongoing operations, in large part due to the absorption of STRF administrative costs, and was projected to incur a deficit in 2007/08. However, no recommendations to address these findings were provided. Instead, it was determined that additional management information and data was needed to validate the study findings and to make appropriate recommendations.

The Bureau's report also referenced needs for completion of a more extensive review "due to declining revenue," and discussed findings concerning the potential causes of "… the apparent downward trend in Bureau revenues …" No data were provided supporting these findings.

Finally, the report discussed potential problems related to (1) requirements to maintain separate STRF fund accounts for non-degree and degree institution assessments, (2) the caps on the balances that can be accumulated in the STRF accounts, and (3) various administrative complexities associated with the Bureau's reapproval application fee and STRF assessment processes. The report did not provide recommendations to address either the STRF or reapproval application fee problems.

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Chapter III

Current Program Profile

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III. Current Program Profile

This chapter of the report presents background information and findings regarding all of the major components of the Bureau's regulatory program and administrative operations.

A. Regulated Community

As of mid-July 2005, there were 1,543 Bureau-approved institutions operating in California, consisting of 1,229 non-degree-granting institutions and 314 degree-granting institutions. Additionally, there were 778 registered institutions, some of which may no longer be active. Available data suggests that the numbers of state approved non-degree, degree, and registered institutions have been relatively static over the past five (5) years. During 1998, 1999, and 2000, there were somewhat higher numbers of closures and license expirations among non-degree-granting institutions than occurred during subsequent years (120 to 130 per year, versus 60 to 90 per year in subsequent years). Various factors may have been responsible for this comparatively higher number of reported closures, including:

- Uncertainty and disruption caused by the transfer of regulatory responsibility from the Council to the Bureau
- An increase in registered institutions that could have replaced some previously existing non-degree institutions
- Elimination of the 50-mile limit on branch locations which allowed institutions to include multiple locations throughout the state under a single approval to operate.

The Bureau also serves as the State Approving Agency for administration and approval of veterans' educational programs. The Veterans' Education Program encompasses about 945 public and private postsecondary vocational and degree-granting institutions with an estimated enrollment of 28,750 veterans. Bureau approval is required in order for the students, or veterans, to be eligible for federal financial aid.

Exhibit 3, on the next page, shows total enrollment from 1995 through 2003 in public higher education institutions which are exempted from regulation by the Bureau. Exhibit 3 also shows total enrollment during these same years in WASC-accredited, non-public higher education institutions which also are exempt from regulation by the Bureau. During 2003, a total of 2.25 million students were enrolled in the state's public higher education institutions. Additionally, about 261,000 students were enrolled in WASC-accredited, non-public higher education institutions. More than 90 percent of students enrolled at WASC-accredited, non-public higher education institutions were enrolled at 4-year schools.

Enrollment in the state's public higher education institutions increased 33 percent between 1995 and 2003. During this same period, enrollment at WASC-accredited, non-public higher education institutions increased 24 percent.

Exhibit 3
Reported Enrollment at Public and WASC-Accredited Non-Public Institutions

	Higher Education System	Reported Enrollment									Percent Change 1995-2003
		1995	1996	1997	1998	1999	2000	2001	2002	2003	
Public Institutions	University of California	163,704	166,718	169,862	173,643	178,410	183,355	191,903	201,297	208,391	27%
	California State University	325,976	336,803	343,779	349,804	358,947	367,363	387,311	406,515	407,530	25%
	California Community Colleges	1,146,961	1,212,029	1,246,276	1,252,954	1,311,568	1,487,274	1,589,735	1,647,214	1,546,047	35%
	CCC District Office	56,855	93,351	68,404	78,804	89,386	97,964	97,161	99,388	88,293	55%
	Other Public Colleges and Universities	1,211	1,291	1,153	1,146	1,122	1,201	1,252	1,263	1,257	4%
	Total Enrollment at Public Institutions	**1,694,707**	**1,810,192**	**1,829,474**	**1,856,351**	**1,939,433**	**2,137,157**	**2,267,362**	**2,355,677**	**2,251,518**	**33%**
4-Year WASC-Accredited Non-Public Institutions	Azusa Pacific University	4,601	4,838	4,806	5,368	6,033	6,497	6,835	7,693	8,188	78%
	Biola University	3,023	3,206	3,402	3,618	3,874	4,092	4,317	4,535	5,084	68%
	California Baptist University	1,240	1,687	2,008	2,094	2,058	2,043	2,090	2,165	2,359	90%
	California Institute of Technology	1,973	1,902	1,927	1,861	1,889	1,968	2,058	2,120	2,172	10%
	California Lutheran University	1,240	1,687	2,008	2,094	2,058	2,043	2,090	2,165	2,359	90%
	Chapman Universities	3,221	3,496	3,568	3,821	NA	4,353	4,591	4,784	5,134	59%
	Chapman Universities - Academic Centers	NA	5,462	6,185	6,197	NA	6,145	4,779	8,443	6,275	15%
	Claremont Graduate University	1,965	1,959	2,033	2,056	2,016	1,969	1,944	2,108	2,013	2%
	Fresno Pacific University	1,650	1,610	1,179	1,742	1,677	1,676	2,016	2,347	2,167	31%
	Fuller Theological Seminary	2,276	2,394	2,263	2,514	2,513	2,475	2,599	2,815	2,812	24%
	Golden Gate University	6,013	6,049	5,546	5,418	5,379	5,322	4,843	4,415	4,299	-29%
	Loma Linda University	3,153	3,320	4,194	3,467	3,345	3,153	3,162	3,297	3,501	11%
	Loyola Marymount University	6,666	6,298	6,889	7,152	NA	7,500	7,921	8,155	8,652	30%
	Mount Saint Mary's College	1,974	1,905	1,981	2,024	2,066	1,973	1,965	1,210	2,127	8%
	National University	21,068	9,292	13,370	14,062	17,065	16,848	18,267	17,865	17,064	-19%
	Pepperdine University	7,545	7,561	7,583	7,703	7,663	7,476	7,383	7,791	8,021	6%
	Point Loma Nazarine University	2,459	2,484	2,336	2,657	2,711	2,733	2,881	2,998	3,219	31%
	Saint Mary's College of California	4,321	4,084	83	4,346	4,058	4,150	4,127	4,442	4,486	4%
	Santa Clara University	7,714	7,861	7,857	7,707	7,668	7,356	7,368	7,811	7,670	-1%
	Stanford University	16,002	15,754	15,106	17,153	18,083	18,549	18,591	18,297	17,824	11%
	University of La Verne	5,675	5,617	6,026	NA	6,820	6,603	7,283	7,519	7,471	32%
	University of Redlands	3,678	3,582	3,538	3,693	3,979	4,143	4,224	4,297	4,366	19%
	University of San Diego	6,416	6,613	6,683	NA	6,205	6,943	7,062	7,126	7,395	15%
	University of San Francisco	8,273	8,036	8,020	7,890	7,797	7,917	8,063	8,194	8,159	-1%
	University of Southern California	27,956	28,071	5,572	28,739	28,766	29,194	29,813	30,682	31,606	13%
	University of the Pacific	5,850	5,574	630	5,244	5,640	5,609	5,697	5,886	6,121	5%
	Vanguard University of Southern California	1,200	1,211	1,313	1,315	1,429	1,654	1,827	1,915	2,076	73%
	Whittier College	2,167	2,148	2,104	2,164	2,198	2,682	2,098	2,141	2,275	5%
	78 Other Institutions (Enrollment Less than 2,000)	45,320	48,076	47,379	51,736	52,025	56,757	57,866	60,883	62,702	38%
	Total 4-Year WASC-Accredited Non-Public Institutions	**201,272**	**198,418**	**172,172**	**200,356**	**201,388**	**225,487**	**229,835**	**240,043**	**243,246**	**21%**
2-Year WASC-Accredited Non-Public Institutions		5,635	7,332	10,978	11,874	12,177	14,411	14,161	15,556	14,098	150%
Other WASC-Accredited Non-Public Institutions		3,110	2,839	4,397	3,836	2,831	5,150	3,816	3,785	3,627	17%
Total Enrollment at WASC-Accredited Non-Public Institutions		**210,017**	**208,589**	**187,547**	**216,066**	**216,396**	**245,048**	**247,812**	**259,384**	**260,971**	**24%**

Source: California Postsecondary Education Commission.

Data available from the Bureau's SAIL system, based on unverified data submitted by Bureau-approved private postsecondary institutions, suggests that about 400,000 students are enrolled at Bureau-approved private postsecondary institutions, consisting of about 300,000 students at non-degree-granting institutions and about 100,000 students at degree-granting institutions. About 120,000 of these students are enrolled in programs that are subject to Article 7 (*Maxine Waters Act*) requirements. The Bureau does not collect data regarding the number of students enrolled at registered programs. Consequently, the accuracy of the enrollment statistics for registered institutions that have historically been cited by the Bureau cannot be determined. In contrast to the growth in enrollment at the state's public and WASC-accredited institutions since the mid-1990s, enrollment at Bureau-approved institutions has been stagnant.

The foregoing statistical data shows that Bureau-approved institutions serve a significant portion of students seeking postsecondary educational and vocational training services. For example, Bureau-approved institutions currently serve as many students as are served by the entire California State University system. Additionally, it is generally believed that Bureau-approved institutions tend to serve segments of the population that are underserved by traditional public and private postsecondary education institutions.

B. Bureau Organization and Staffing

During FY2004/05, the Bureau had 60.6 authorized permanent positions organized into eight (8) functionally-specialized business units as follows:

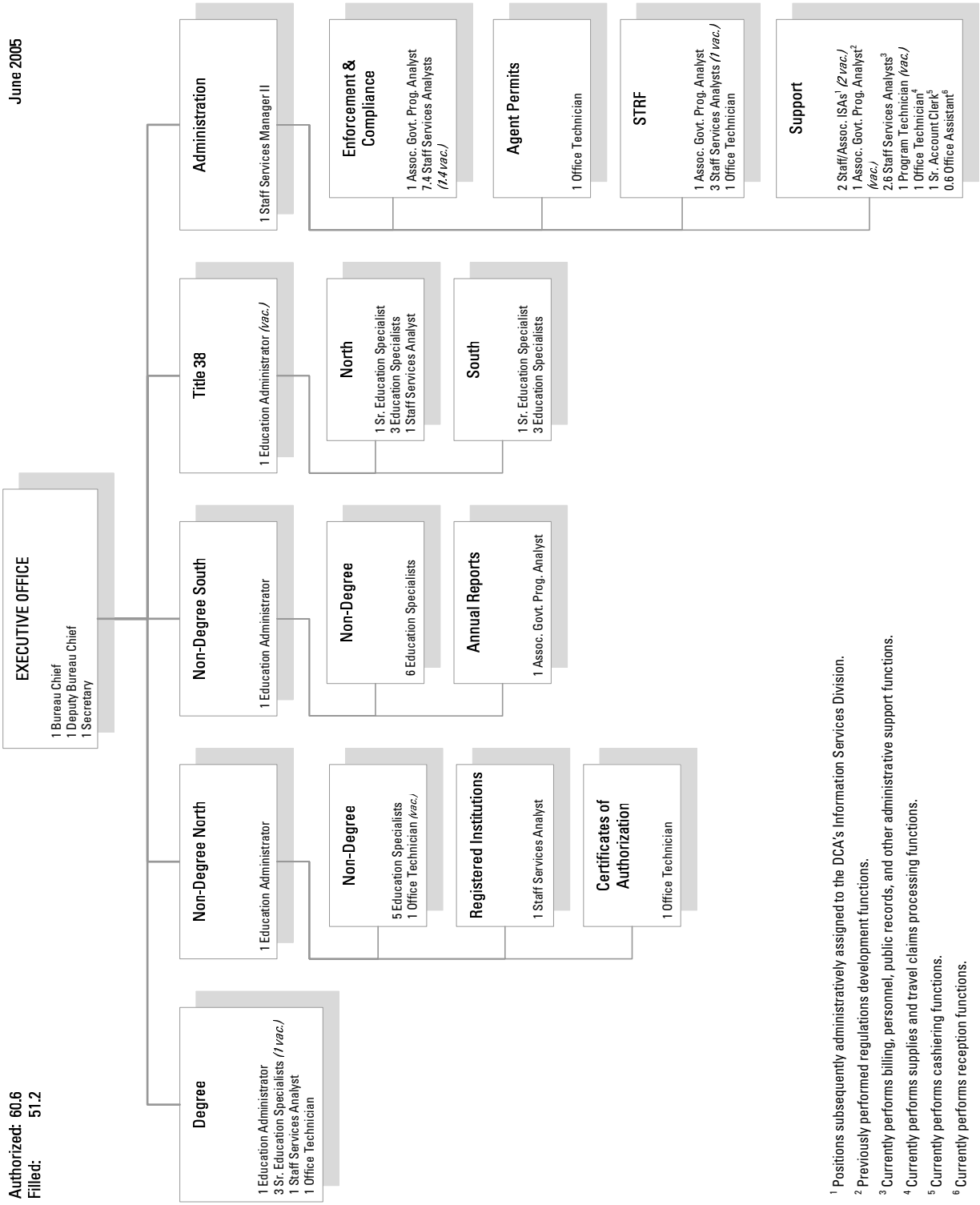
- Executive Office – 3 positions
- Administration Unit – 10.2 positions
- Non-Degree Unit, North – 9 positions, including 2 positions assigned to the Registration and Certificate of Authorization (COA) Programs
- Non-Degree Unit, South – 8 positions, including one (1) position assigned to Annual Reports
- Degree Unit – 6 positions, including one (1) position assigned part-time to the Religious Exemption Program
- Enforcement & Compliance Unit – 9.4 positions, including one (1) position assigned to the Agent Permit Program
- Student Tuition Recovery Fund – 5 positions
- Title 38 – 10 positions

Exhibit 4, on the next page, illustrates the Bureau's organizational structure and position allocations as of June 2005. Only 51 of the Bureau's 60 authorized positions were filled during June. The Bureau has continued to operate with a significant number of vacant positions since that time.

During July 2005, the Bureau began redirecting some Non-Degree Program positions to create a new Enforcement Unit. As a first step toward implementation of this restructuring, the Bureau merged the North and South Non-Degree Units and, concurrently, redirected one (1) of the Non-Degree Program's Education Administrator positions and two (2) of the Non-Degree Program's Education Specialist positions to the new Enforcement Unit. Additionally, in an effort to conserve funds and concurrently address Title 38 workload demands, the Bureau transferred one (1) Education Specialist position from the Non-Degree Program, and one (1) Senior Education Specialist position from the Degree Program, to the federally-funded Title 38 Program. As a result of these redirections and transfers, the Bureau currently has only eight (8) Education Specialist positions allocated to the Non-Degree Program, and only two (2) Senior Education Specialist positions allocated to the Degree Program. This restructuring has not yet been completed, and additional positions from other business units may be redirected to staff the new Enforcement Unit.

As with other state agencies, the Bureau was adversely impacted in recent years by the statewide hiring freeze and mandated staffing and budget reductions. Prior to the hiring freeze, the Bureau had about 70 authorized positions, most of which were filled, except for the two-year period immediately following creation of the Bureau during 1998. During 1998/99 and 1999/00, the Bureau had about 150 authorized positions, of which about one-half were 2-year limited-term positions that expired in June 2000.

Exhibit 4
Organization Chart
June 2005



[1] Positions subsequently administratively assigned to the DCA's Information Services Division.
[2] Previously performed regulations development functions.
[3] Currently performs billing, personnel, public records, and other administrative support functions.
[4] Currently performs supplies and travel claims processing functions.
[5] Currently performs cashiering functions.
[6] Currently performs reception functions.

The Bureau has recently experienced somewhat higher levels of attrition and, due to its current fiscal circumstances, has been delaying the filling of vacant positions in order to conserve funds. Only 52 of the Bureau's 60.6 authorized positions are currently filled, and 25 percent of these positions are assigned exclusively to the separately funded STRF and Title 38 Programs.

About one-half of the Bureau's filled positions are classified as Education Specialist, Senior Education Specialist, or Education Administrator. Nearly all of these staff have at least five (5) years experience with the Bureau. Additionally, most of these staff have prior higher education industry experience with the predecessor Council, the California Postsecondary Education Commission, or the California Community College system.

All Education Specialists and Senior Education Specialists are exempt from FLSA. As FLSA-exempt employees, these staff are expected, within reason, to work as many hours as is necessary to accomplish their assignment or fulfill their responsibilities, and are not authorized to receive any form of overtime compensation. Also, consistent with their professional status, these staff have discretion in establishing their work hours, but are required to keep management apprised of their schedule and whereabouts.

The minimum qualifications for the Education Specialist position are a bachelor's degree from an accredited or Bureau-approved institution, and either two-years professional administrative experience at postsecondary education agencies or institutions, or three-years experience teaching at a an accredited or Bureau-approved postsecondary education institution. The Senior and Administrator-level positions have additional experience requirements. Educational Specialist compensation currently ranges up to $70,968 per year. Compensation for Senior Education Specialists currently ranges up to $77,976 per year. Compensation for Education Administrators, who also are FSLA-exempt, ranges up to $86,724 per year.

C. New Institution Application Reviews and Approvals

Prior to granting an approval to operate to a non-degree-granting or to a degree-granting institution, Bureau staff first review the institution's application. If the institution in not operating in California when it applies for an approval to operate, the institution must file with its application an operational plan that documents how it will fulfill all applicable requirements and minimum standards.[51] The operational plans are required to include a detailed description of the institution's program for implementing the operational plan, including proposed procedures, financial resources, and the qualifications of owners, directors, officers, and administrators employed at the time of the filing of the application. Often times the applications and accompanying operational plans that are submitted are substantially incomplete and, as needed, Bureau staff prepare a deficiency letter requesting additional information or documentation from the applicant.

There is considerable variability between staff with respect to how much information and documentation they require applicants to submit before reaching a decision regarding the application. In many cases this submission-review-deficiency letter process repeats itself multiple times over a period of six to twelve months, or much longer in some cases, until either Bureau staff determine that they have sufficient information to make a decision, or the applicant withdraws or abandons their application. The Bureau rarely denies an application.

In cases where an application is not completed by the applicant within one year after it was initially filed, the Bureau is required to deem the application abandoned, and require the applicant to seek an approval to operate only by submitting a new application and fee.[52] However, the Bureau has not always consistently implemented this requirement.

1. New Non-Degree-Granting Institution Applications

In the case of non-degree-granting institutions, the Bureau's review focuses primarily on ascertaining whether the quality and content of each course or program of instruction, training, or study may reasonably be expected to achieve the objective for which it is offered. The assessment may also encompass a review of the institution's space and equipment requirements, faculty qualifications, information disclosures, student records, health and safety standards, and financial stability and responsibility.[53]

Among other documentation requirements, the Bureau's regulations require that applicants provide a feasibility study for each educational service that has not been offered by the institution within the prior year establishing (1) the job market demand in the labor market area for the graduates of the proposed educational service, (2) the projected

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[51] Sections 94900(g) and 94915(f)

[52] Code of Regulations, Section 74180

[53] Section 94915(b)

number of graduates from other vocational training programs in the labor market area, and (3) the average starting salary and average salary in the labor market area for the occupations to which the educational service is represented to lead. The feasibility analysis is required to be based on the most current, reasonably available data, and may not be based on data collected more than two years before the application is submitted.[54]

The Bureau's regulations also require that applicants provide statements from three (3) employers indicating that each employer (1) has reviewed the curriculum and the equipment used in the educational service, (2) finds that the curriculum and equipment satisfy the job training needs of employers in the labor market area, and (3) would be willing to hire graduates of the educational service based on the training offered if the employer had job vacancies.[55] If another state agency has authority over the institution's curriculum and, in some cases, instructor qualifications and facilities, the Bureau will require prior approval by that agency of those components of the institution's application (e.g., vocational nursing). Many Bureau staff believe that the employer statements have limited value, particularly in cases where the curriculum is authorized by statute or another state agency that has authority over the curriculum offered.

New institution applicants are permitted to self-certify that their programs are exempt from Article 7 (*Maxine Waters Act*) requirements. The Bureau does not consistently verify the validity of these exemptions.

2. New Degree-Granting Institution Applications

In the case of degree-granting institutions, the Reform Act requires that the Bureau complete a review that encompasses the following 15 areas:[56]

- Institutional purpose, mission, and objectives
- Governance and administration
- Curriculum and instruction
- Faculty, including their qualifications
- Physical facilities
- Administrative personnel
- Educational record-keeping
- Tuition, fee, and refund schedules
- Admissions standards
- Financial aid policies and practices
- Scholastic regulations and graduation requirements
- Ethical principals and practices
- Library and other learning resources
- Student activities and records
- Degrees offered.

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[54] Code of Regulations, Section 73210(a)(6)

[55] Code of Regulations, Section 73210(b)(2)

[56] Section 94900(a)

Job market feasibility studies and employer statements are not required for degree-granting institutions. If another state agency has authority over the institution's curriculum and, in some cases, instructor qualifications and facilities, the Bureau will require prior approval of those components of the institution's application (e.g., registered nursing, behavioral sciences, etc.).

3. Issuance of Temporary Approvals to Operate

Following review and acceptance of an institution's application, a temporary approval to operate is issued to the institution authorizing it to enroll students and operate.[57] Temporary approvals to operate may be granted subject to any restrictions that the Bureau reasonably deems necessary to ensure compliance with the Reform Act, pending completion of a review and assessment of the institution's operations. Bureau staff are required to conduct a site visit to the institution before making a decision regarding issuance of an approval to operate. The Reform Act requires that:

- The Bureau complete an inspection of non-degree-granting institutions between 90 and 180 days after commencement of operations under the temporary approval to operate[58]
- The Bureau impanel a visiting committee for degree-granting institutions within 90 days of receipt of a completed application[59]
- The Bureau reach a decision on the merits of the application within 90 days following completion of the inspection or receipt of the visiting committee's evaluation report, or any reasonable extension of time not to exceed 90 days.[60]

Thus, for both non-degree and degree institutions, the Reform Act limits the term of a temporary approval to operate to 360 days, and requires that the Bureau make a decision as to whether to issue an approval to operate or deny the application within that timeframe.

Due to large backlogs of pending new institution applications, and in inability to complete required site visits and make decisions regarding the merits of these applications within prescribed timeframes, the Bureau has frequently issued temporary approvals for periods longer than 360 days, or extended the expiration date of previously issued temporary approvals beyond the 360-day limit. If site visits are performed within the prescribed timeframe, it is often times difficult for Bureau staff to complete needed reviews in some areas. For example, a 90 to 180-day timeframe usually is not sufficient for purposes of assessing an institution's admissions practices, completion or placement rates, or STRF assessments and collections.

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[57] Sections 94901(g) and 94915(f)(2)

[58] Section 94915(f)(2)

[59] Section 94901(c)

[60] Sections 94901(c) and 94915(f)(2)

As an alternative to issuing a full approval to operate or denying a new institution application, the Reform Act enables the Bureau to issue a conditional approval to operate that is subject to whatever restrictions the Bureau deems appropriate.[61] If a conditional approval to operate is issued, the Bureau must notify the institution of the restrictions or conditions, and their basis. The institution then has the right to request a hearing to contest any restrictions or conditions that are imposed. The Bureau rarely issues conditional approvals to new institutions even though, in many cases, the institutions have not yet achieved full compliance with all applicable requirements and standards. Instead, full approvals are issued, sometimes with accompanying verbal or written statements regarding needs for the institution to address various deficiencies. Alternatively, the Bureau defers taking action on the institution's application and, instead, extends the expiration date of the institution's temporary approval.

4. Current Status of Approved Institutions

Table 4, below, shows the current approval status of the 1,543 non-degree and degree-granting institutions that are approved to operate.

Table 4
Status of Approved Institutions as of July 2005

Status	*Non-Degree*	*Degree*	*Total*
Temporary Approval	139	75	214
Conditional Approval	8	3	11
Full Approval	1,082	236	1,318
Total Approved Institutions	**1,229**	**314**	**1,543**
Approved On Probation	0	0	0

Nearly 90 percent of non-degree-granting institutions have a full approval to operate, and almost all of the others have a temporary approval to operate. Of the 139 non-degree-granting institutions operating under a temporary approval, 39 were issued their temporary approval to operate more than a full year ago. Fifteen (15) of these temporary approvals were issued more than two years ago. As of July 2005, site reviews had not been completed for 18 of these 39 institutions. Subsequently, the Bureau completed site visits to nearly all of these institutions and took action on some of these applications.

[61] Sections 94901(c)(2) and 94915(e)(2)

Table 4 also shows that 75 of the 314 approved degree-granting institutions (25 percent) have a temporary approval to operate. Of these, 55 were issued more than a year ago, 29 were issued more than two years ago, and seven (7) were issued more than four (4) years ago. With one (1) exception, as of July 2005, site reviews had not been completed for any of the 55 degree-granting institutions that have been operating with a temporary approval for longer than a full year.

With one (1) exception, the conditional approvals issued by the Bureau have all been issued to currently approved institutions rather than to new institutions. Conditional approvals are used by the Bureau in lieu of placing an institution on probation.

The Bureau has never placed an approved institution on probation. Instead, depending on the circumstances, the Bureau either revokes an institution's approval to operate or takes action on the institution's reapproval application, when submitted. As shown by **Table 5**, below, the Bureau has issued 16 conditional approvals to approved institutions, and denied 10 reapproval applications over the past seven (7) years.

Table 5
Summary of Bureau Administrative Actions[1/]

Approval Status	*Application Type*	*Administrative Action Taken*	*1998/99 to 2000/01*	*2001/02*	*2002/03*	*2003/04*	*2004/05*	*Total*
Full or Conditional Approval	**Reapproval**	Conditional Approval	5	2	2	3	4	16
		Denial	0	1	1	4	4	10
	Not Applicable	Unapproved Change of Ownership - Termination By Operation of Law	0	0	1	3	4	8
		Other Violations of Laws - Revocation	0	2	0	1	3	6
	Total Administrative Actions Taken Involving Approved Institutions		**5**	**5**	**4**	**11**	**15**	**40**
Temporary Approval	**New Institution**	Conditional Approval	1	0	0	0	0	1
		Denial	2	0	1	6	5	14
	Total Administrative Actions Taken Involving New Institutions		**3**	**0**	**1**	**6**	**5**	**15**

[1/] Eight (8) of the 37 administrative actions taken during the past two years are currently pending appeal. Six (6) of these cases involved denials of new institution applications.

5. Site Reviews at New Non-Degree-Granting Institutions

In the case of new non-degree-granting institutions, site reviews are usually completed by a single individual and usually last less than a full day. During the review, staff typically interview key executives and administrators, inspect the institution's facilities and records, meet faculty and students, and observe class instruction to the extent practicable given the amount of time being spent at the institution. Visiting committees are rarely impaneled for purposes of completing site reviews of non-degree-granting institutions. If visiting committees are utilized, the Reform Act prohibits payment of compensation to members of the committees, but permits reimbursement of actual travel and per diem expenses, and requires that the subject institution reimburse the Bureau for these costs.

During 1994, the predecessor Council attempted to collaborate with the California Chamber of Commerce and the Business Roundtable to develop a system for identifying and recruiting site review teams for non-degree institutions. These efforts were not successful. Subsequently, during the late-1990s, the Bureau attempted to utilize retirees on a part-time basis, but found that this approach was not effective.

6. Site Reviews at New Degree-Granting Institutions

In the case of new degree-granting institutions, the Bureau always impanels a visiting committee to complete the site reviews. Panel members include a Bureau staff member and experts in specific academic content areas and administrative services selected from both Bureau-approved and WASC-accredited institutions. The panel may also include practitioners in specialty areas such as behavioral sciences, health care, or law. If visiting committees are utilized, the Reform Act prohibits payment of compensation to members of the committees, but permits reimbursement of actual travel and per diem expenses, and requires that the subject institution reimburse the Bureau for these costs.

7. Financial Capability Reviews

The Reform Act requires that all approved institutions demonstrate that "... the institution is financially capable of fulfilling its commitments to its students."[62] As part of their application for approval, institutions must submit their most current financial report.[63]

The Reform Act also requires that the Bureau determine an institution's financial responsibility as part of its review of an institution's application for approval or reapproval.[64] An institution shall be considered financially responsible by the Bureau if it has sufficient assets to:

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[62] Section 94800(a)

[63] Section 94802(a)(7)

[64] Section 94804(a)

- Provide the educational services stated in its official publications and statements
- Comply with the standards and requirements set forth in the Reform Act for non-degree, degree, and registered institutions, as applicable
- Provide required levels of administrative and financial resources
- Comply with specified financial resource requirements set forth in the *Maxine Waters Act*, if applicable.[65]

Conversely, an institution shall not be considered financially responsible by the Bureau under either of the following circumstances:

- The institution fails to have sufficient accounts receivable and cash, or assets that can be converted to cash within seven (7) days, to pay all operating expenses due within 30 days[66]
- The institution does not have a current assets to current liabilities ratio of at least 1.25:1 as of the end of its latest fiscal year.[67]

The Reform Act requires that the financial reports submitted by institutions establish whether the institution is in compliance with the above financial responsibility requirements, and also whether any conditions exist that would indicate that the institution is not financially responsible.[68] Any audit or financial report submitted to the Bureau also is required to contain a statement that the institution has paid, or has not paid, all STRF assessments owed to the Bureau. If an institution has not paid all STRF assessments owed, it is required to report to the Bureau within 30 calendar days on its plan to become current.[69]

If the Bureau determines that an institution is not financially responsible, it may require completion of an independent financial audit for the latest completed fiscal year and for the current fiscal year. The Bureau also may require that the institution prepare a plan for establishing financial responsibility. However, Bureau staff do not closely review the financial information submitted by institutions as part of the application review process. In most cases the information is reviewed only superficially, or not at all. Bureau staff generally do not have the educational background, training, or experience needed to enable them to critically review the financial information that is provided. Furthermore, even if such reviews were completed, the Reform Act does not appear to enable the Bureau to deny an approval based on a determination that the institution is not financially responsible. Finally, it is unclear that the two objectively defined minimum financial standards set forth in the Reform Act (i.e., cash, or equivalents, and accounts receivable equal to 30 day's operating expenses, and a current ratio of 1.25:1) are sufficient to

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[65] Section 94804(a)

[66] Section 94804(b)(1)

[67] Section 94804(b)(2)

[68] Section 94806(b)(4)

[69] Section 94806(e)

provide assurance that the institution is "financially capable of fulfilling its commitments to its students."

Bureau staff are unable to recall a case where an application was denied due to a failure to meet the Reform Act's financial standards and requirements. Many Bureau staff believe that if a rigorous analysis of the financial information submitted with an institution's application was performed, it could significantly reduce the risk of subsequent closure, and the number and amount of associated STRF claims.

The financial capabilities, complexity, and sophistication of the institutions that the Bureau regulates vary tremendously. The predecessor Council, and the Bureau for a limited period of time following its formation in 1998, had a small number of in-house staff accountants that performed financial reviews of some institutions. None of the Bureau's current staff have a financial accounting or auditing background. The Department of Consumer Affairs has a small number of staff that are potentially capable of performing reviews of financial statements and reports, but these staff have other assigned responsibilities and generally are not available to provide financial statement review services to the Bureau.

During April 2005, the DCA's Internal Audit Office completed a review of the Bureau's financial capability review practices focusing on the procedures used for new institutions seeking an approval to operate. As part of the study, DCA's auditors interviewed Bureau staff, reviewed documentation related to the Bureau's financial review policies and processes, and performed a limited review of 12 new institution application files. The DCA's auditors found that the Bureau "does not conduct sufficient financial capability reviews to ensure new institutions have the financial resources to deliver educational curriculum to their students" and that "many new institutions are receiving approvals to operate regardless of their financial position..."

Additionally, the authors noted the following:

- Applicable laws and regulations are "unclear and ambiguous".
- The Bureau's current financial capability reviews are "extremely limited". Bureau staff "does not consistently apply financial capability review procedures" and "some staff used established checklists and worksheets when performing their reviews, while others did not." Many of the sampled files "lacked financially related documents altogether."
- Bureau staff "does not have the required education and experience to evaluate complex financial data presented by many of the new institutions seeking approval. As a result, staff does not perform necessary verification and analytical procedures to evaluate schools' financial capability. Instead, they mainly rely on the schools' calculated current ratio as the sole support of financial strength in delivering the proposed education services."
- "By only using the results of the current ratio, the Bureau leaves itself vulnerable to approving schools that may have difficulties operating."
- Sufficient financial reviews require personnel "with years of training and experience."

Table 6, below, provides a recap of deficiencies that were identified in the documentation supporting an institution's fulfillment of the Reform Act's minimum financial capability requirements.

Table 6
Financial Capability Documentation Deficiencies

Attribute	*Applicable Reform Act Provisions*	*Files Tested*	*Files Lacking Adequate Documentation*	*Exception Rate*
Submission of a complete set of financial statements prepared in accordance with GAAP to include: Balance Sheet, Statement of Operations, Statement of Cash Flows, and Statement of Retained Earnings or Capital	94806(b)(1)(2)&(3)	12	12	100%
Financial report established whether the institution complies with financial responsibility criteria and financial resource requirements	94806(4)	12	9	75%
The institution had sufficient assets to provide educational services stated in its official publication	94804(a)(1)	12	11	92%
Determination that officers, directors, and owner demonstrated financial and fiduciary responsibility	94804(a)(2), 94915(b)(9)	10	8	80%

Source: Financial Capability Study, Department of Consumer Affairs, Internal Audits Office, April 2005.

As shown by Table 6, none of the files reviewed contained a complete set of properly prepared financial statements. Additionally, in most instances:

- The institution did not have sufficient assets to provide the educational services stated in their official publication
- The financial reports provided did not establish whether the institution had complied with the Reform Act's financial responsibility criteria and financial resource requirements.

Additionally, the DCA's auditors interviewed three (3) CPA staff who previously worked for the Bureau and performed financial capability reviews. These staff reported that they would provide results of their reviews to the Bureau's Education Specialists for consideration in the approval process, but that many of the Education Specialists granted approvals regardless of their concerns. One of these CPAs performed "elaborate reviews of financial information," and noted many deficiencies with the information provided by the institutions, including:

- Inconsistencies with reported financial information
- Cash flow problems
- Inconsistent financial statements
- Unreliable financial figures.

Finally, as part of this study, other states were surveyed regarding their financial capability review practices. The survey results showed that "other states' financial capability review practices are generally more detailed and provide better guidance as to what is required ..." Other findings from the survey included the following:

- In addition to a sound financial position, many states require institutions to carry bonding and/or insurance to protect students
- Two states use external review teams for financial matters
- Other states have more defined laws and regulations that clearly specify financial information required to be submitted as part of the approval process
- Some states use the US Department of Education's financial ratios.

8. New Institution Application Fees

As shown by **Table 7**, below, application fees for new institutions vary according to the type and number of programs offered and the size of the institution, in terms of gross revenues. New degree-granting institutions are required to pay significantly higher application fees than new non-degree-granting institutions.

Table 7
New Institution Application Fee Schedule

	Gross Revenues		
Program Category	*$1 Million or More*	*$100,000 to $999,999*	*Less Than $100,000*
Non-Degree-Granting Institutions/Programs			
Up To 5 Courses of Instruction	$950	$900	$850
Each Additional Course of Instruction	$95	$90	$85
Each Course Subject to Article 7 Requirements	$950	$900	$850
Degree-Granting Institutions/Programs			
Up To 5 Degree Programs	$4,275	$4,050	$3,825
Each Additional Program	$95	$90	$85
One Course of Instruction	$950	$900	$850
Each Additional Course of Instruction	$95	$90	$85

As shown by **Table 8**, on the following page, the amount of application fees received for new, non-degree institutions has increased during the past several years. During the three-year period from 2001/02 through 2002/03 an average of about $220,000 was collected compared to more than $240,000 collected during 2003/04, and nearly $260,000 collected during 2004/05. Application fees for new degree-granting institutions

also recently increased. An average of about $137,000 per year in application fees for new, degree-granting institutions was collected over the three-year period from 2001/02 through 2003/04 compared to more than $190,000 collected during 2004/05.

Table 8
New Institution Application Fees By Year

Category	*1998/99*	*1999/00*	*2000/01*	*2001/02*	*2002/03*	*2003/04*	*2004/05*
Non-Degree – Original Application	$156,514	$111,398	$135,255	$151,166	$155,640	$158,891	$160,870
Non-Degree – Article 7 Requirements	35,800	43,905	69,709	49,215	50,525	69,865	77,235
Non-Degree – Additional Programs/Courses/Titles	10,500	12,515	17,440	14,875	14,595	12,930	19,085
Total New Non-Degree Application Fees	**$202,814**	**$167,818**	**$222,404**	**$215,256**	**$220,760**	**$241,686**	**$257,190**
Degree – Original Application	$134,522	$159,464	$100,030	$128,150	$133,660	$127,810	$167,350
Degree – Article 7 Requirements	5,700	5,200	2,000	2,850	7,350	4,450	10,885
Degree – Additional Programs/ Courses/Titles	125	1,000	300	100	3,645	3,485	12,185
Total New Degree Application Fees	**$140,347**	**$165,664**	**$102,330**	**$131,100**	**$144,655**	**$135,745**	**$190,420**

Source: SAIL System Reports.

The amount of new non-degree institution application fees collected by the Bureau is sufficient to fund about seven (7) percent of the total $4 million cost of the Non-Degree Program. The amount of new degree institution application fees collected by the Bureau during 2004/05 is sufficient to fund about 13 percent of the $1.5 million cost of the Degree Program.

D. Approved Institution Additions and Changes

The Reform Act requires submission of an application for approval to the Bureau whenever a shift in control or ownership of an institution occurs, or if there is a change in the location where the institution operates.[70] An application for approval must also be submitted to add a new program or course of instruction.[71] Additionally, an application for approval is required to be submitted to add a new branch or satellite location.[72]

As shown by **Table 9**, below, application fees for these types of additions and changes vary according to the type and number of programs offered and the size of the institution, in terms of gross revenues. The application fees charged to degree-granting institutions are significantly higher than are charged to non-degree institutions for some comparable types of changes (e.g., change of ownership). Fees have not been established for adding a new branch or satellite location. However, the Bureau has sometimes charged such fees to non-degree institutions based on the fee schedule established for new non-degree institution applications.

Table 9
Add/Change Application Fee Schedule

	Gross Revenues		
Program Category	*$1 Million or More*	*$100,000 to $999,999*	*Less Than $100,000*
Non-Degree-Granting Institutions/Programs			
Addition of a Course of Instruction	$380	$360	$340
Addition of Course of Instruction Subject to Article 7	$950	$900	$850
Change of a Main Location	$285	$270	$255
Change of a Branch Location	$285	$270	$255
Change of Ownership	$950	$900	$850
Degree-Granting Institutions/Programs			
Addition of a Degree Title	$238	$225	$213
Addition of a Degree Program	$2,375	$2,250	$2,125
Addition of a Course Subject to Article 7	$950	$900	$850
Addition of a Course of Instruction	$380	$360	$340
Change of a Main Location	$285	$270	$255
Change of a Branch Location	$95	$90	$85
Change of Ownership	$4,275	$4,050	$3,825

[70] Section 94846

[71] Sections 94901(j) and 94915(h)

[72] Section 95857

As shown by **Table 10**, below, during the past several years, the Bureau has consistently collected between $220,000 and $230,000 in add/change application fees for non-degree institutions. On average, the Bureau has collected $316,000 in add/change application fees for degree-granting institutions, but the actual amounts received in any specific year have varied significantly from this average. For example, during 2003/04, $393,000 in add/change application fees for degree-granting institutions was collected, but the amount of add/change fees collected for degree-granting institutions during 2004/05 decreased by $120,000 to $273,000.

Table 10
Add/Change Application Fees By Year

Category	*1998/99*	*1999/00*	*2000/01*	*2001/02*	*2002/03*	*2003/04*	*2004/05*
Non-Degree – Add Program/ Course	$119,266	$98,396	$88,220	$128,385	$147,935	$131,921	$132,130
Non-Degree – Add Program/ Course Article 7 Requirements	78,670	18,700	12,925	15,650	7,780	17,950	17,100
Non-Degree – Change of Ownership	54,500	28,980	23,000	40,575	47,040	49,390	53,950
Non-Degree – Change Main/ Branch Location	27,680	25,554	21,200	36,324	19,046	28,170	25,190
Total Non-Degree Add/Change Fees	**$277,206**	**$166,630**	**$145,345**	**$220,934**	**$221,801**	**$227,431**	**$228,370**
Degree – Add Degree Program/ Title	$262,352	$215,929	$206,236	$258,059	$277,742	$312,734	$226,215
Degree – Add Non-Degree Program/Course, including Article 7 Requirement, if applicable	30,598	18,650	31,055	13,900	21,845	32,895	18,390
Degree – Change of Ownership	22,675	13,535	73,950	25,425	48,415	39,305	20,025
Degree – Change Main/Branch Location	7,600	9,125	2,570	3,706	5,421	7,920	7,979
Total Degree Add/Change Fees	**$323,225**	**$257,239**	**$313,811**	**$301,090**	**$353,423**	**$392,854**	**$272,609**

Source: SAIL System Reports.

The amount of non-degree institution add/change application fees collected is sufficient to fund about six (6) percent of the total $4 million cost of the Non-Degree Program. The amount of degree institution add/change application fees collected is sufficient to fund about 21 percent of the total $1.5 million cost of the Degree Program.

E. Regular and Unannounced Inspections

Section 94774.5(b) of Article 4 of the Reform Act requires that the Bureau establish a "regular inspection program" that includes "unannounced inspections." Additionally, Section 94835 of Article 6 of the Reform Act requires that the Bureau "conduct periodic unannounced reviews and investigations of institutions to determine compliance with this chapter." To date, the Bureau has not established a program for conducting regular or periodic unannounced inspections of either non-degree or degree-granting institutions.

As discussed previously, site visits generally are conducted prior to issuing an approval to operate. Additionally, site visits sometimes are conducted as part of the process of reviewing a reapproval application or when investigating complaints. In nearly all cases, institutions are provided advance notice of the Bureau's site visit plans. The provisions governing these types of site visits and associated inspections are contained in Articles 8 and 9 of the Reform Act for degree and non-degree-granting institutions, respectively, and are separate from the requirements of Articles 4 and 6 related to conduct of "a regular inspection program" and "unannounced" inspections and investigations.

F. Annual Fees

As shown in **Table 11**, below, annual fees are the same for non-degree and degree-granting institutions, but vary according to the institution's gross revenues. Unlike application fees, the fee structure for annual fees is the same for both non-degree and degree institutions.

Table 11
Annual Fee Schedule

	Gross Revenues		
Program Category	*$1 Million or More*	*$100,000 to $999,999*	*Less Than $100,000*
Non-Degree-Granting Institutions			
Rate (applied to annual gross revenue)	$0.0057	$0.0054	$0.0051
Minimum	$665	$630	$595
Maximum	$4,750	$4,500	$4,250
Degree-Granting Institutions			
Rate (applied to annual gross revenue)	$0.0057	$0.0054	$0.0051
Minimum	$665	$630	$595
Maximum	$4,750	$4,500	$4,250

On a monthly basis, the Bureau prepares "invoices" that are mailed to institutions 60 days in advance of the due date for payment of their annual fees. As shown in **Table 12**, on the following page, during the past several years the Bureau has consistently collected an average of about $2.3 million in annual fees from non-degree institutions. On average, the Bureau has collected about $780,000 in annual fees from degree-granting institutions.

The amount of non-degree institution annual fees collected is sufficient to fund about 56 percent of the total $4 million cost of the non-degree program. The amount of degree institution annual fees collected is sufficient to fund about 52 percent of the total $1.5 million cost of the degree program.

Table 12
Annual Fees By Year

Category	*1998/99*	*1999/00*	*2000/01*	*2001/02*	*2002/03*	*2003/04*	*2004/05*
Non-Degree Institutions	$1,677,221	$2,320,495	$2,023,533	$1,930,749	$2,164,412	$2,395,286	$2,284,156
Degree Institutions	$539,683	$813,196	$759,359	$759,168	$727,645	$807,231	$825,635

Source: SAIL System Reports.

During March 2005, the Bureau identified all open (unpaid) annual fee invoices since January 1998, and mailed follow-up notices to all of these institutions beginning during April 2005. The Bureau estimated that there potentially was as much as $1.1 million of annual fees that had not been paid, and expected that about one-half of this amount might actually be collected. The Bureau has been tracking payments received in response to this mailing. As of August 22, 2005, the Bureau had collected $202,000 in delinquent annual fee payments as a result of this initiative, but only $1,190 was received during the first three (3) weeks of August. It is unclear whether significant additional amounts will be collected as a result of this initiative. The Bureau is currently planning to pursue administrative action against 40 institutions that it believes have not fully paid their annual fees.

G. Reapproval Applications

Section 94840 of Article 6 of the Reform Act requires that approved institutions file a completed reapproval application with the Bureau at least 90 days prior to expiration of an approval to operate. Reapproval applications need only describe or document any changes made by the institution since its last application was submitted to the Bureau.[73] It is commonly understood that the term "changes" refers only to those types of changes for which the Reform Act requires advance approval by the Bureau (e.g., when adding a program/course, changing a main/branch location, or changing ownership). Consequently, if an institution has routinely submitted these types of applications to the Bureau and received the Bureau's approval of these additions and changes, as required, there normally will be few, if any, other additions or changes that will need to be addressed as part of the institution's reapproval application.

For the past several years, the Bureau has notified institutions in advance of needs to submit reapproval applications. In some cases, the institutions still fail to submit their reapproval applications at least 90 days prior to expiration of their approval to operate, as is required.[74] The Bureau does not currently assess 20 percent penalties for late payment of reapproval application fees that are received when reapproval applications are submitted after the required due date.[75]

Notwithstanding the requirement that institutions need only describe or document any changes since their last application was submitted to the Bureau, institutions are currently required to provide more than a dozen other types of information or documentation as part of their application, including a completed affidavit and Letter of Intent and a copy of their current catalog, advertising or promotional literature, enrollment agreements, loan agreements, and disclosure forms and notices. The Bureau also asks that the institutions provide a copy of their current approval document. Non-degree-granting institutions are required to provide a current financial report, with a complete set of financial statements, while degree-granting institutions are required to provide information regarding how their records are organized, maintained, and stored, and the custodian and location of the records.

The breadth and depth of the reviews completed by the Bureau of reapproval applications varies depending on the institution and the professional judgment of Bureau staff completing the review. In the event that the Bureau is unable to complete its review of a reapproval application prior to the expiration date of an institution's current approval to operate, the expiration date is required to be extended until such time as the Bureau

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[73] Sections 94840, 94901(a)(3) and 94915(c)(4)

[74] Section 94840

[75] Code of Regulations, Title 5, Section 74000

completes its review and notifies the institution of its decision.[76] The Bureau automatically issues an acknowledgement letter whenever a reapproval application is received. The acknowledgement letter references Section 94842 which provides the institution with authority to continue to operate in the event that the Bureau is unable to complete its review of the application prior to expiration of the institution's approval to operate. However, if backlogs of reapproval applications accumulate, the institutions may still be adversely impacted to the extent that there is a delay in obtaining the Bureau's approval of any proposed additions or changes that are incorporated into their reapproval application.

Bureau staff generally do not attempt to verify or reconcile an institution's annual fee payments as part of the reapproval application review process. Generally, staff will only try to confirm that some amount of annual fees has been paid for each year. Also, Bureau staff do not generally attempt to verify or reconcile an institution's STRF payments. Most Bureau staff will request a current annual report, if one has not been submitted, but generally do not attempt to verify or reconcile any of the statistical data provided in the annual reports.

1. Non-Degree-Granting Institution Reapproval Site Visits

In the case of non-degree-granting institutions applying for a renewal of their approval to operate, the Bureau believes that it is not required to complete a site inspection of the institution to verify compliance with the Reform Act's standards. Prior to 2002, site inspections of non-degree institutions were required "prior to granting *any* approval."[77] These inspections were required to include (1) an inspection of the institution's facilities and records, (2) interviews with administrators, faculty, and students, and (3) an observation of class instruction, as determined appropriate by the Bureau.[78] However, AB 201 (Wright), potentially modified these requirements, effective January 1, 2002, by changing the term "shall" to "may" in Section 94840. Section 94840 governs all reapproval applications, and now reads as follows:

> "The renewal application *may* be reviewed and acted upon as provided in Section 94802, 94804, and 94835, and Section 94900 or 94915, whichever is applicable."

Section 94802 governs submission of applications for approval for both non-degree and degree institutions, but also contains cross-references to Articles 8 and 9 which define the Bureau's application review and approval processes for degree and non-degree institutions, respectively. While Section 94802 does not specifically require completion of site inspections, site inspections are required under Articles 8 and 9. Thus inspections of

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[76] Section 94842

[77] Section 94915(c)

[78] Section 94915(c)

non-degree institutions may still be required as part of the Bureau's reapproval application review process.

Currently, most reapproval applications are approved without completing a site visit to the institution. According to Bureau staff, for at least the past several years, site visits have only been completed for 20 to 30 percent of the institutions that have submitted reapproval applications.

2. Degree-Granting Institution Reapproval Site Visits

In the case of degree-granting institutions applying for a renewal of their approval to operate, the Bureau believes that it is not currently required to complete a site inspection of the institution to verify compliance with the Reform Act's standards. Prior to 2002, the Bureau was prohibited from issuing an approval to operate to a degree-granting institution without first completing a qualitative review and assessment of each degree program offered by the institution, and all operations of the institution.[79] These reviews were required to include a comprehensive site review process, performed by a qualified visiting committee impaneled by the Bureau for that purpose.[80] As discussed previously for non-degree institutions, site visits may still be required to be performed as part of the Bureau's reapproval application review process.

Since prior to formation of the Bureau in 1998, Bureau staff have not completed degree institution reapproval site visits in most cases. Additionally, where site visits have been completed, the scope of the review has usually been limited and visiting committees generally have not been impaneled to assist with these assessments. Reapproval site visits generally have been limited to cases where significantly different, new programs are being added, or where there is a pattern of complaints or other information suggesting there are problems at the institution.

Section 94750 requires completion of on-site reviews and assessments of all nationally accredited, degree-granting non-profit public benefit corporations that qualify for exemption from selected provisions of the Reform Act (see Section II-B). These reviews are required to be completed "at least once every three years." It is our understanding that, during the mid-1990s, staff at the predecessor Council completed initial site visits to each of these institutions for purposes of determining each institution's compliance with specified minimum standards and requirements. About a dozen nationally accredited institutions continue to submit documentation to the Bureau every three years, but no site reviews to any of these institutions have been completed since the formation of the Bureau more than seven (7) years ago.

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[79] Section 94900(a) and 94902(a)(1)

[80] Section 94901(a)(1)

3. Review of Fee and Assessment Payment Records

Before any institution may be considered for approval or reapproval, the institution is required to pay all annual fees and STRF assessments. Also, if an institution that has failed to make timely payments of fees and assessments is approved, the approval "... shall be conditional, subject to any restrictions that the Bureau deems appropriate, and shall be valid for a period not to exceed two years."[81]

As discussed previously, Bureau staff generally do not attempt to verify or reconcile an institution's annual fee payments as a part of the reapproval application review process. Also, a recent Bureau analysis of open (unpaid) annual fee invoices showed that a significant number of annual fee payments were past due (see Chapter III, F. Annual Fees). Additionally, Bureau staff rarely verify an institution's enrollment and tuition payments, or associated STRF assessment collections or remittances, either at the time the STRF payments are received or otherwise.

In summary, rather that requiring that institutions pay all annual fees and assessments prior to issuing an approval to operate, or reapproval, as required by Section 94841, the Bureau usually issues reapprovals irrespective of an institution's payment record. A significant number of approved institutions have not kept current on their annual fee payments, and many may be underpaying these fees. Also, Bureau staff believe that many institutions have not paid, or have significantly underpaid, their STRF assessments. Nonetheless, fewer than one (1) percent of approved institutions (11 of 1,543) have a conditional approval to operate and only one of these was issued as a result of an institution's failure to timely pay all required annual fees or STRF assessments. Only a couple of approved institutions have had their approval to operate revoked, or their reapproval application denied, due to a failure to pay all required annual fees or STRF assessments.

4. Reapproval Application Fees

As shown by **Table 13**, on the following page, reapproval application fees are identical to the fees established for new institution applications, and vary according to the type and number of programs offered and the size of the institution, in terms of gross revenues. Degree-granting institutions are required to pay significantly higher reapproval application fees than non-degree-granting institutions. However, Section 94840 provides that:

> "Fees for processing the renewal application shall be based on the number and types of changes it contains."

[81] Section 94841

Table 13
Reapproval Application Fees

Program Category	Gross Revenues		
	$1 Million or More	*$100,000 to $999,999*	*Less Than $100,000*
Non-Degree-Granting Institutions/Programs			
Up To 5 Courses of Instruction	$950	$900	$850
Each Additional Course of Instruction	$95	$90	$85
Each Course Subject to Article 7 Requirements	$950	$900	$850
Degree-Granting Institutions/Programs			
Up To 5 Degree Programs	$4,275	$4,050	$3,825
Each Additional Program	$95	$90	$85
One Course of Instruction	$950	$900	$850
Each Additional Course of Instruction	$95	$90	$85

Similarly, Sections 94915(c)(4) and 94900(a)(3), for non-degree and degree-granting institutions, respectively, provide that:

> "Fees for reapproval applications shall be based on the actual costs involved in the administrative review process."

Since creation of the Bureau, staff have disagreed about how to implement the above provisions, given the Bureau's fee structure under which the fees for non-degree-granting institutions are significantly less than the fees for degree-granting institutions. It is the opinion of some Bureau staff that these provisions prohibit charging any reapproval application fees unless there are "changes" incorporated into the institution's reapproval application that occurred subsequent to the institution's last approval and that, in such cases, the fees charged should be the same as are normally charged for the specific types of changes involved (see Table 9 on page 57). Other Bureau staff believe that full application fees should be charged in all cases, irrespective of the number and type of changes involved, because the fees are needed to cover the Bureau's administrative costs to complete a review of the reapproval application. In part, these differences of opinion may reflect differences in the level of the standard reapproval application fees charged to non-degree and degree-granting institutions (e.g., in many cases, a $950 fee may be sufficient to cover routine reapproval costs, while a $4,275 fee would substantially exceed the Bureau's actual costs to complete this type of review).

On average, over the past seven (7) years, the Bureau has collected $361,000 in reapproval application fees for non-degree-granting institutions, but the actual amounts

received in any specific year have varied significantly from this average. For example, during 2000/01, $255,000 in reapproval application fees for non-degree-granting institutions was received, whereas more than $400,000 in reapproval application fees was received in both 1999/00 and in 2003/04. To some extent these variances reflect changes made in the Bureau's reapproval notification and assessment practices. During the past three (3) years, the amount of reapproval application fees for non-degree institutions appears to have stabilized at about $382,000 per year.

For degree-granting institutions, the amount of reapproval application fees received recently increased from less than $30,000 per year to more than $300,000 during 2004/05. From mid-1999 through late-2002, reapproval application fees were imposed on degree-granting institutions only to the extent that the application included substantive changes or additions since the institution's last approval. During late-2002, the Bureau began charging degree-granting institutions full reapproval application fees, irrespective of the number or types of changes that occurred subsequent to the institution's last approval.

Table 14
Reapproval Application Fees By Year

Category	*1998/99*	*1999/00*	*2000/01*	*2001/02*	*2002/03*	*2003/04*	*2004/05*
Non-Degree – Reapproval	$279,885	$307,651	$217,122	$243,340	$259,685	$279,949	$234,165
Non-Degree – Reapproval Article 7 Requirements	55,434	103,265	26,535	44,346	71,944	87,659	85,880
Non-Degree – Reapproval More Than 5 Programs/Courses	25,620	39,490	11,935	24,100	44,960	38,533	44,284
Total Non-Degree Reapproval Fees	**$360,929**	**$450,406**	**$255,592**	**$311,786**	**$376,589**	**$406,141**	**$364,329**
Degree – Reapproval	$227,715	$50,180	$23,000	$12,600	$133,500	$227,480	$288,025
Degree – Reapproval Article 7 Requirements	1,900	1,850	1,200	0	2,885	5,600	5,700
Degree – Reapproval More Than 5 Programs/Courses/Titles	2,925	0	2,500	0	2,980	8,100	20,995
Total Degree Reapproval Fees	**$232,540**	**$52,030**	**$26,700**	**$12,600**	**$139,365**	**$241,180**	**$314,720**

Source: SAIL System Reports

The amount of non-degree institution reapproval application fees received is sufficient to fund about 10 percent of the total $4 million cost of the non-degree program. The amount of degree institution reapproval application fees received during 2004/05 is sufficient to fund about 21 percent of the total $1.5 million cost of the degree program.

H. Non-Degree Program Workload, Backlogs, and Staffing

1. New Non-Degree-Granting Institution Applications

Exhibit 5, on the next page, shows the number of applications received and processed for non-degree institutions by type of application from 1998/99 through 2004/05. As shown by Exhibit 5, the Bureau received between 120 and 154 new institution applications per year. Typically, about 25 percent of these applications are abandoned or withdrawn, while a handful of others are transferred to the Degree Unit or, in a small number of cases, denied. The remaining applications are approved.

From 1999/00 through 2001/02, the Bureau largely eliminated a large backlog of new non-degree institution applications that was inherited from the Council or accumulated during the Bureau's first year of operation. During this period, the Bureau processed 238 more new non-degree institution applications than were received. In recent years, the Bureau has been approving an average of about 100 new non-degree institution applications per year. Offsetting this, during the past several years, an equivalent number of non-degree institutions have closed or their approvals have expired.

2. Pending New Non-Degree-Granting Institution Applications

As shown by **Table 15**, following Exhibit 5, nearly all of the Bureau's pending new non-degree institution applications were received within the past year. However, as discussed previously, 39 non-degree-granting institutions have been operating under a temporary approval for more than a full year, including 15 institutions that have been operating under a temporary approval for more than two (2) years. Also, as of July 2005, site reviews had not been completed at 18 non-degree-granting institutions that were issued temporary approvals to operate more than a full year ago. Subsequently, the Bureau completed site visits to nearly all of these institutions and took action on some of these applications. As a result, the Bureau is more current on its processing of new non-degree-granting institution applications.

Exhibit 5
Non-Degree Program Application Workload Profile

Fiscal Year	New Institution Applications	Add/Change Applications: Add Non-Degree Program/ Course	Add/Change Applications: Add Branch/ Satellite	Add/Change Applications: Change School Location	Add/Change Applications: Change of Ownership	Reapproval Applications	Notifications: Change School Name	Notifications: Other Changes[1]
Received								
1998/99	154	318	114	94	78	340	41	101
1999/00	125	404	105	95	52	414	37	148
2000/01	128	279	111	80	28	257	36	140
2001/02	139	434	132	143	40	264	45	227
2002/03	151	497	102	78	55	268	40	211
2003/04	120	361	134	99	51	286	30	27
2004/05	141	325	110	95	66	245	34	4
Transferred, Withdrawn, Abandoned, or Denied								
1998/99	34	28	28	11	10	22	2	5
1999/00	29	43	17	4	6	34	2	10
2000/01	21	10	10	6	0	21	3	1
2001/02	29	18	22	9	4	25	0	14
2002/03	36	70	16	12	7	33	2	35
2003/04	39	31	21	6	6	39	2	18
2004/05	38	90	17	7	6	28	4	15
Approved								
1998/99	89	217	68	100	32	121	26	70
1999/00	244	460	138	93	66	384	50	189
2000/01	115	217	92	69	42	225	38	138
2001/02	192	379	106	117	35	289	36	198
2002/03	113	423	118	88	57	322	38	165
2003/04	90	324	106	85	47	300	35	57
2004/05	116	332	118	97	55	313	30	8
Total Completed								
1998/99	123	245	96	111	42	143	28	75
1999/00	273	503	155	97	72	418	52	199
2000/01	136	227	102	75	42	246	41	139
2001/02	221	397	128	126	39	314	36	212
2002/03	149	493	134	100	64	355	40	200
2003/04	129	355	127	91	53	339	37	75
2004/05	154	422	135	104	61	341	34	23
Difference (Received Less Completed)								
1998/99	31	73	18	(17)	36	197	13	26
1999/00	(148)	(99)	(50)	(2)	(20)	(4)	(15)	(51)
2000/01	(8)	52	9	5	(14)	11	(5)	1
2001/02	(82)	37	4	17	1	(50)	9	15
2002/03	2	4	(32)	(22)	(9)	(87)	0	11
2003/04	(9)	6	7	8	(2)	(53)	(7)	(48)
2004/05	(13)	(97)	(25)	(9)	5	(96)	0	(19)
Total	**(227)**	**(24)**	**(69)**	**(20)**	**(3)**	**(82)**	**(5)**	**(65)**

[1] Includes Change Program/Course Title, Change Program, Change Methodology, Change Mission, and Other Notifications.

Source: SAIL System Reports

Table 15
Pending Non-Degree Institution Applications as of July 2005

Fiscal Year	New Institution Applications	Add/Change Applications				Reapproval Applications	Notifications	
		Add Non-Degree Program/ Course	Add Branch/ Satellite	Change School Location	Change of Ownership		Change School Name	Other Changes[1]
1998/99	0	0	0	0	0	1	0	0
1999/00	0	2	0	0	0	6	0	0
2000/01	1	0	0	0	0	9	0	0
2001/02	0	1	0	1	0	8	0	0
2002/03	1	9	3	0	0	19	1	4
2003/04	7	15	5	3	0	61	0	0
2004/05	67	49	15	14	15	142	3	0
Total	**76**	**76**	**23**	**18**	**15**	**246**	**4**	**4**

[1] Includes Change Program/Course Title, Change Course, Change Methodology, and Change Course Length.

Source: SAIL System Reports

3. Non-Degree-Granting Institution Add/Change Applications

The Bureau receives and processes non-degree institution applications for all of the following types of changes:

- Add Non-Degree Program or Course
- Add Branch or Satellite Site
- Change School Location
- Change School Ownership.

As shown by Exhibit 5, on the previous page, 600 to 750 applications involving these types of changes are received by the Bureau each year. Generally, about 90 percent of these applications are approved; most of the rest are either abandoned or withdrawn. As with new non-degree institution applications, backlogs of add/change applications were inherited from the Council or accumulated during the Bureau's first year of operation. Most of these backlogs were eliminated during 1999/00. Subsequently, add/change application backlogs reaccumulated, but were reduced again during 2004/05.

As shown by Table 15, as of mid-July 2005 there were 76 pending add non-degree program/course applications, of which 27 were more than a year old. Under current law, unless exempted, approved institutions are unable to offer these new programs or courses until the Bureau has completed its review and approval of the institution's application. These circumstances partially explain the high level of frustration that some industry participants have with the Bureau's approval processes, and their support for an exemption from such processes in cases where the institution already has an approval to operate

issued by the Bureau and the course or program has already been approved by a regional or national accrediting agency.

4. Non-Degree-Granting Institution Reapproval Applications

Exhibit 5 also shows the number of non-degree institution reapproval applications received and processed by the Bureau. During the past five (5) years, the Bureau received an average of 265 non-degree reapproval applications per year. Generally, about 90 percent of these applications are approved; most of the rest are either abandoned or withdrawn. As with new non-degree institution applications, a large backlog of reapproval applications was inherited from the Council or accumulated during the Bureau's first year of operation. Bureau staff were unable to begin addressing this backlog problem until 2001/02 because of the previously discussed initial focus on backlogged applications in other areas (e.g., new institutions, add non-degree program/course, change of ownership, etc.).

To reduce the backlog of pending reapproval applications, during May 2005, the Bureau implemented a streamlined review process. After completing only a limited, desk review of the application, the Bureau began issuing reapprovals in those cases where there weren't any known substantive issues or concerns involving complaints, compliance, or fee payments. While the number of backlogged reapproval applications was significantly reduced from the levels that existed previously, the Bureau still had 246 pending non-degree reapproval applications as of mid-July 2005, and more than 100 of these were more than a full year old. As discussed previously, the Bureau does not believe that it is required to complete site visits to these institutions as part of the reapproval process and, in most cases, has not done so.

Because non-degree institutions are usually issued an approval to operate with a four-year term, extended reapproval application processing delays can have adverse impacts on the Bureau's associated revenue collections. To mitigate these impacts, Bureau staff have sometimes either backdated or reduced the term of the reapprovals to reestablish the institution's "natural" renewal cycle and enable a higher level of revenue collections than would otherwise be realized.

5. Non-Degree Unit Education Specialist Staffing and Caseloads

On average, each of the eight (8) Education Specialist positions currently allocated to the Bureau's two Non-Degree Units is responsible for all activity associated with more than 150 approved non-degree-granting institutions, plus a pro-rata share of new non-degree-granting institution applications. Additionally, there are significant backlogs of pending reapproval and add/change applications that these same staff are responsible for processing.

I. Degree Program Workload, Backlogs, and Staffing

1. Degree-Granting Institution Applications

Exhibit 6, on the next page, shows the number of applications received and processed for degree institutions by type of application from 1998/99 through 2004/05. As shown by Exhibit 6, in recent years the Bureau has consistently received between 30 and 40 new degree institution applications per year. On average, about 80 percent of the new degree institution applications are approved. The remainder are usually withdrawn or abandoned or, in rare cases, denied. The Bureau also receives between 50 and 70 reapproval applications per year for degree-granting institutions, nearly all of which are approved. Additionally, on an annual basis the Bureau receives between 200 and 250 add/change applications, consisting of:

- At least 100 Add Degree Program applications
- 30 to 50 Add Non-Degree Program/Course applications
- 25 to 50 Add Branch or Satellite applications
- 20 to 35 Change School Location applications
- Up to 12 Change of Ownership applications.

2. Pending Degree-Granting Institution Applications

As shown by **Table 16**, following Exhibit 6, as of July 2005 the Bureau had a total of about 80 pending degree-granting institution applications, including 17 new degree-granting institution applications that were submitted more than a year earlier. Additionally, there were a small number of pending reapproval, add degree program, and add non-degree program/course applications that were submitted more than a year earlier. In some cases, the processing of degree-granting institution applications has not been completed after more than three (3) full years. For example, as of July 2005, there were four (4) pending reapproval applications that were more than three (3) years old, five (5) pending add degree program applications that were more than three (3) years old, and four (4) pending add non-degree program/course applications that were more than three (3) years old.

While the absolute number of aged degree-granting institution applications involved is not large, in some cases the absence of a decision regarding these applications, after more than three (3) years, presents a significant hardship to industry participants. During the period that these applications are pending, the sponsoring institution is unable to enroll students in the proposed new programs or courses, or challenge the Bureau's decision through the administrative appeals process in the event that their application is denied.

Exhibit 6
Degree Program Application Workload Profile

Fiscal Year	New Institution Application	Add/Change Applications					Reapproval Application	Notifications	
		Add Degree Program	Add Non-Degree Program/ Course	Add Branch/ Satellite	Change School Location	Change of Ownership		Change School Name	Other Changes [1]
Received or Transferred from Non-Degree									
1998/99	7	65	12	12	22	4	38	8	12
1999/00	17	98	30	28	19	2	35	10	10
2000/01	13	91	45	42	11	19	28	11	4
2001/02	31	103	30	50	19	7	53	13	29
2002/03	32	108	44	37	22	12	57	17	35
2003/04	35	122	51	35	34	8	68	24	54
2004/05	39	102	50	27	28	5	68	16	42
Transferred, Withdrawn, Abandoned, or Denied									
1998/99	6		1	1			1		0
1999/00	7	4	5	3		1		1	1
2000/01	18	16	7	5		2	1	1	2
2001/02	13	3	3	3	1				0
2002/03	5	9	4	4	1			2	3
2003/04	6	11	3	1	2		2	2	0
2004/05	5	6		2	2	1	1		6
Approved									
1998/99	5	23	16	10	23	3	3	6	11
1999/00	4	93	25	23	22	1	66	13	6
2000/01	1	100	39	31	10	17	24	9	5
2001/02	3	79	23	47	18	7	45	13	20
2002/03	18	118	33	39	22	10	49	13	30
2003/04	32	116	58	36	31	8	75	24	57
2004/05	27	92	49	22	22	6	67	15	38
Total Completed									
1998/99	11	23	17	11	23	3	4	6	11
1999/00	11	97	30	26	22	2	66	14	7
2000/01	19	116	46	36	10	19	25	10	7
2001/02	16	82	26	50	19	7	45	13	20
2002/03	23	127	37	43	23	10	49	15	33
2003/04	38	127	61	37	33	8	77	26	57
2004/05	32	98	49	24	24	7	68	15	44
Difference (Received Less Completed)									
1998/99	(4)	42	(5)	1	(1)	1	34	2	1
1999/00	6	1	0	2	(3)	0	(31)	(4)	3
2000/01	(6)	(25)	(1)	6	1	0	3	1	(3)
2001/02	15	21	4	0	0	0	8	0	9
2002/03	9	(19)	7	(6)	(1)	2	8	2	2
2003/04	(3)	(5)	(10)	(2)	1	0	(9)	(2)	(3)
2004/05	7	4	1	3	4	(2)	0	1	(2)
Total	**24**	**19**	**(4)**	**4**	**1**	**1**	**13**	**0**	**7**

[1] Includes Change Program/Course Title, Change Program, Change Methodology, Change Mission, and Other Notifications.

Source: SAIL System Reports

Table 16
Pending Degree-Granting Institution Applications
(July 2005)

		Add/Change Applications						Notifications	
Year Received	*New Institution Application*	*Add Degree Program*	*Add Non-Degree Program/ Course*	*Add Branch/ Satellite*	*Change School Location*	*Change of Ownership*	*Reapproval Application*	*Change School Name*	*Other Changes*[1]
1999/00	0	0	0	0	0	0	1	0	0
2000/01	0	0	0	0	0	0	1	0	0
2001/02	1	5	4	0	0	0	2	0	0
2002/03	4	1	0	0	0	0	1	0	0
2003/04	12	1	1	0	0	0	2	0	0
2004/05	23	15	1	1	4	0	2	0	0
Total	**40**	**22**	**6**	**1**	**4**	**0**	**9**	**0**	**2**

[1] Includes Change Program/Course Title, Change Program, Change Methodology, Change Mission, and Other Notifications.

Source: SAIL System Reports

3. Degree Unit Senior Education Specialist Staffing and Caseloads

One of the Degree Unit's three (3) Senior Educational Specialist positions, has been vacant since December 2004 and was recently redirected to the Title 38 Program. As a result, the Unit's two (2) Senior Educational Specialist positions are responsible for nearly all activity related to more than 150 approved institutions, plus one-half of all new degree-granting institution applications. Also, as discussed previously, there are some backlogged Degree Program applications, and 55 temporary approvals that were issued more than a full year ago that have not yet been acted on. With one exception, site visits have not been completed to any of these 55 currently operating degree-granting institutions.

To reduce subordinate staff workloads to more manageable levels, some approved degree-granting institutions, and some new degree-granting institution applications, are currently assigned to the Degree Unit's supervising Education Administrator. Also, the Degree Unit's Education Administrator handles all change of ownership applications.

J. Religious Exemption Program

Nonprofit religious corporations offering instruction pertaining to the principles, beliefs, and practices of the church, religious denomination, or religious organization, as applicable, or offering courses pursuant to Section 2789 of the Business and Professions Code, and conferring diplomas or degrees upon completion of the religious education course or program, are exempt from the Reform Act.[82] This exemption does not extend to any secular courses or programs offered by these same institutions. Section 94739(b)(6) also contains a provision that expresses the legislative intent that "the state shall not involve itself in the content of degree programs awarded by any institution under this paragraph so long as the institution awards degrees and diplomas only in the beliefs and practices of the church, religious denomination, or religious organization."

To obtain a religious exemption, the Reform Act requires that nonprofit religious corporations file annually with the Bureau evidence to demonstrate their nonprofit religious corporation status under the Corporations Code. Additionally, Section 94908(b) requires that these institutions submit an annual report providing information regarding (1) number of students enrolled, by level of degree or type of program, (2) the number of degrees and diplomas awarded, by level, (3) the degree levels offered, and (4) the tuition and fees required for each term, program, course of instruction or degree offered. The Reform Act does not contain any provisions for interim changes or updates to an institution's offerings. However, all religious exemptions have a July 31st expiration date. As a result of the fixed annual expiration of these exemptions, the number of approved exemptions is lowest in August and highest in July of each year.

To implement this program, the Bureau requires that religious institutions initially submit a completed application that requests information regarding the institution's name, physical address, mailing address, telephone and fax number, and contact person name, address and telephone number. Additionally, the application requests similar information regarding the owner of the institution. Finally, applicants are required to self-certify that that the institution is in compliance with a listing of 11 separate standards that are derived from the provisions of Section 94739(b)(6).

Following initial approval, institutions are required to submit an annual application that includes the initial application, plus:

- A Certificate of Good Standing from the Secretary of State reflecting the current status of the corporation
- An Annual Report
- An Annual Gross Revenue Worksheet.

[82] Section 94739l(b)(6)

The format and content of the Annual Report is consistent with the provisions of Section 94908(b). The Bureau's Annual Gross Revenue Worksheet, which is needed in order for the Bureau to determine whether the institution is paying the correct annual fee, requires disclosure of the total amount of tuition and fees posted by the institution, along with an accompanying self-certification regarding the correctness of the data provided.

The Bureau is not authorized by statute to require submission of catalogs, course outlines, or other documentation that could be used to determine whether institutions are in compliance with the standards related to qualifying for an exemption. However, Bureau staff have sometimes requested that copies of such documents be provided when needed to verify that an approval to operate was not needed. The existence of standards to qualify for an exemption, in combination with the exempt status of these institutions and the strict statutory prohibition on becoming involved in the content of these institutions' programs, is inherently contradictory and difficult for the Bureau to consistently implement.

As shown by **Table 17**, below, the Bureau receives and processes an average of about 40 new religious exemption applications per year, plus an average of about 165 exemption renewals. There are no backlogs of pending new or renewal applications. As of mid-July, there were a total of about 245 exempt religious institutions. Total enrollment at these institutions is about 25,000 students.

A Staff Services Analyst within the Degree Unit is currently responsible, on a part-time basis, for processing all Religious Exempt Program applications, both original applications and annual renewal applications.

Table 17
Approved Religious Exemption Applications

Type of Application	*2002/03*	*2003/04*	*2004/05*
New Applications	29	41	52
Renewals	153	177	175
Total Exemptions Granted	**182**	**218**	**227**

Source: SAIL System Reports

As shown by **Table 18**, on the following page, application fees for religious exempt institutions vary according to the size of the institution, in terms of gross revenues. The same fees are charged for both new applications and renewals. There are no fees for interim changes or updates that an institution may submit to the Bureau.

Table 18
Religious Exempt Institution Application Fee Schedule

	Gross Revenues		
Type of Application	*$1 Million or More*	*$100,000 to $999,999*	*Less Than $100,000*
New Application	$95	$90	$85
Reapproval Application	$95	$90	$85

As shown by **Table 19**, below, the Bureau collects less than $25,000 per year in fees from religious exempt institutions. This level of fees appears sufficient to fund the Bureau's costs to process new religious institution applications and annual reapprovals.

Table 19
Religious Exempt Institution Application Fees By Year

Category	*1998/99*	*1999/00*	*2000/01*	*2001/02*	*2002/03*	*2003/04*	*2004/05*
Original Application Fees	$455	$60	$255	$3,015	$3,930	$4,105	$5,165
Annual (Reapproval) Fees	13,818	8,723	14,196	12,588	8,562	18,403	19,743
Delinquent Fees - Annual Fees	121	0	17	0	17	0	85
Total Religious Exempt Institution Fees	**$14,394**	**$8,783**	**$14,468**	**$15,603**	**$12,509**	**$22,508**	**$24,993**

Source: SAIL System Reports.

K. Registration Program

As shown by **Table 20**, below, as of mid-July 2005, there were 778 registered institutions. Some of these institutions may no longer be active.

Table 20
Registered Institutions by Program Category

Program Category	Number of Institutions
Intensive English Language (IEL)	42
License Exam & Preparation (LEP)	168
Continuing Education (CE)	157
Short-Term Career (STC)	271
Short-Term Seminar (STS)	140
Total	778

Source: SAIL System Reports.

To register a program with the Bureau, applicants must complete and submit a 30-page application. The cover sheet of the application is also used for fee remittance purposes. The next nine (9) pages of the application request information regarding the institution, contact person, directors, administrators, governing board, agent for service of process, custodian of records, form of organization, ownership and owners, and facilities. The next 16 pages of the application consists of multiple page questionnaires for each the five (5) categories of registered programs. The last four (4) pages of the application consist of requests for documentation and other materials, such as copies of catalogues, enrollment agreements, advertisements, and fact sheets, if applicable, and declaration/signature pages.

Authorized staffing assigned to the Registration Program currently consists of one (1) Staff Services Analyst position. There are no significant backlogs of pending registration applications. There are, however, a significant number of pending requests for changes to previously approved registration applications. The Bureau does not currently track registration add/change workload, or backlogs of pending requests for changes.

Registration Program workload data for periods prior to 2003/04 are not available. As shown by **Table 21**, on the following page, during 2003/04, the Bureau processed 229 Registration Program applications. **Table 22**, following Table 21, shows that the number of registration program applications processed decreased to 205 during 2004/05. The

decrease in number of Registration Program applications processed during 2004/05 may reflect the impacts of the recently enacted exemption from the Reform Act for programs costing less than $500.

Table 21
2003/04 Registration Program Applications

Disposition	Continuing Education	Intensive English Language	License and Exam Preparation	Short-Term Career	Short-Term Seminar	Unknown	Total
Approved	39	4	36	75	18	1	173
Withdrawn	3	0	0	3	6	13	25
Abandoned	0	0	0	0	0	17	17
Transferred	1	0	1	3	1	3	9
Exempt	0	0	0	0	1	1	2
Denied	0	0	0	0	0	3	3
Total	**43**	**4**	**37**	**81**	**26**	**38**	**229**

Source: SAIL System Reports.

Table 22
2004/05 Registration Program Applications

Disposition	Continuing Education	Intensive English Language	License and Exam Preparation	Short-Term Career	Short-Term Seminar	Unknown	Total
Approved	34	3	35	62	11	2	147
Withdrawn	1	0	2	1	3	14	21
Abandoned	2	0	2	3	5	13	25
Transferred	1	0	0	2	0	7	10
Exempt	0	0	0	0	0	1	1
Denied	0	0	0	0	0	1	1
Total	**38**	**3**	**39**	**68**	**19**	**38**	**205**

Source: SAIL System Reports.

As shown by Tables 21 and 22, about 70 percent of Registration Program applications are approved. Most of the remaining applications are abandoned or withdrawn. A small number are transferred to other business units for alternative processing (e.g., as a new non-degree or degree institution, program, or course). Registration Program applications are rarely denied.

The statutes governing the Registration Program authorize the Bureau to charge an initial registration fee and an annual fee, and provide that no institution may be registered unless it has paid the appropriate fees. The predecessor Council had established initial application, add/change, and annual fees for the Short-Term Seminar Training Program, but the statutes governing this program were repealed by AB 71 concurrent with enactment of the provisions establishing the Registration Program. These changes became effective on January 1, 1998.

In August 1998, the Bureau adopted emergency regulations establishing fees for the Registration Program. **Table 23**, below, shows the fee schedule that was established through these emergency regulations. The fee schedule was operative for the period from August 1, 1998, through July 31, 1999, at which point the regulations expired by operation of law. In addition to initial registration fees, the fee schedule also included fees for "amended" registrations and periodic "re-registrations." There does not appear to be any statutory authority for assessing either of these latter two types of fees. The fee schedule did not provide for assessment of "annual fees" which were authorized by statute.

Table 23
Registration Program Fee Schedule
Established Pursuant to Emergency Regulations
Effective August 1, 1998 through July 31, 1999

Category	*Initial Fee*	*Annual Fee*	*Amended Registration*	*Re-Registration (every 3 years))*
Intensive English Language	$700	None	$350	$700
License Exam Preparation	$700	None	$350	$700
Continuing Education	$700	None	$350	$700
Short-Term Career	$1,000	None	$500	$1,000
Short-Term Seminar	$700	None	$350	$700

Subsequently, on October 22, 2001, the Bureau received OAL approval of a set of non-substantive technical changes and updates to the permanent regulations that had been adopted by the predecessor Council during the mid-1990s. There were no public hearings held in connection with adoption of these changes. One of the accepted modifications changed the section references for the initial and annual fees that had been established for the predecessor Short-Term Seminar Training Program so that the fees would instead apply

to the new Short-Term Seminar Training registration category even though these educational services were defined differently. The initial application fee for this program had been $700 and the annual fee had been 0.60 percent of gross revenues, with a $700 minimum and a $5,000 maximum. **Table 24**, below, shows the fee schedule for the Short-Term Seminar Training Program, including associated fee reductions required pursuant to AB 71. During the 27-month period from expiration of the emergency regulations (July 31, 1999) to OAL approval of changes to the Bureau's permanent regulations (October 22, 2001), the Bureau did not have authority to assess application fees for new Short-Term Seminar Training program registrations or to assess annual fees for these programs.

Table 24
Short-Term Seminar Training Fee Schedule
Established Pursuant to Modification of Permanent Regulations
Effective October 22, 2001

	Gross Revenues		
Fee Category	*$1 Million or More*	*$100,000 to $999,999*	*Less Than $100,000*
New Applications	$665	$630	$595
Rate (applied to annual gross revenue)	$0.0057	$0.0054	$0.0051
Minimum	$665	$630	$595
Maximum	$4,750	$4,500	$4,250

Subsequent to expiration of the Registration Program emergency regulations, the Bureau continued to charge initial registration fees for all categories of registered programs, and may also have charged annual fees to registered institutions in all categories at one time or another. **Table 25**, on the following page, shows initial and annual fee collections by year for the past seven fiscal years for each of the five program categories for which registration is required. Since expiration of the emergency regulations in July 1999, the Bureau has collected nearly $600,000 in Registration Program fees, excluding fees collected involving the Short-Term Seminar Training program category. The Bureau collected more than $60,000 in Short-Term Seminar Training program application fees from August 1999 to October 2001 without regulatory authority to do so.

Effective January 1, 2005, the Bureau suspended the collection of all fees related to the Short-Term Seminar Training program category because the statutory definition of these programs was repealed by SB 1544 as of that date. Excluding Short-Term Seminar

Training program fee collections, during the past six (6) years, the Bureau has collected an average of nearly $100,000 in Registration Program fees. This amount is sufficient to fully fund all of the costs associated with administration of this program.

Table 25
Registration Program Revenues By Year

Registration Category	*1998/99*	*1999/00*	*2000/01*	*2001/02*	*2002/03*	*2003/04*	*2004/05*
Intensive English Program – Original Application	6,050	8,400	5,600	3,500	2,100	3,500	4,200
Intensive English Program – Annual Fee	0	0	0	0	4,500	0	0
License Exam and Preparation – Original Application	11,070	24,850	11,200	8,505	24,325	27,300	26,200
License Exam and Preparation – Annual Fee	0	0	0	0	700	0	0
Short-Term Career – Original Application	19,225	37,705	39,900	51,735	49,600	70,925	59,180
Short-Term Career – Annual Fee	350	0	500	3,595	300	1,000	0
Continuing Education – Original Application	6,300	21,275	16,800	13,300	14,700	25,950	28,000
Continuing Education – Annual Fee	0	0	300	500	0	0	2,100
Short-Term Seminar – Original Application	27,765	36,350	22,725	19,600	24,375	30,575	12,200
Short-Term Seminar – Annual Fee	600	0	1,500	900	1,895	300	0
Application Request	7,728	1,510	300	450	275	150	50
Delinquent Fee – Annual Fee	0	0	60	0	0	0	0
Dishonored Check/ Replacement and Fees	0	0	(700)	1,010	710	0	0
Refunds[1]	0	0	0	(5,200)	0	0	0
Total Registration Program Fees	**79,088**	**130,090**	**98,185**	**97,895**	**123,480**	**159,700**	**129,830**
Total Excluding Short-Term Seminar Training Category	**50,693**	**93,740**	**73,960**	**77,375**	**97,210**	**128,825**	**117,630**

[1] Refunds data was not consistently captured prior to 2/1/03.

Source: SAIL System Reports.

L. Certificates of Authorization

The statutes governing approval of non-degree-granting institutions require that every instructor and administrator:

- Possess adequate academic, experiential, and professional qualifications to teach the course or to perform the duties that the person is assigned
- Satisfy all standards established by the Bureau by regulation
- Hold an applicable and valid certificate of authorization for service (COA) issued by the Bureau in the specified competence area in which the individual will serve.

Additionally, the statutes prohibit service as an instructor or as administrative staff if the person has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of federal or state funds, or who has been judicially or administratively determined to have committed any violation of the Reform Act or any law involving state or federal funds.[83]

With respect to the certificates of authorization that are required for instructors and administrative staff at non-degree-granting institutions, the Reform Act requires submission of an application to the Bureau. Applicants are also required to submit certified copies of educational transcripts, where applicable, and verified employment histories.

To be eligible for a certificate of authorization, the Reform Act specifies the following requirements:

Directors – Applicants must have at least three (3) years' experience in an administrative position in a public or approved private postsecondary school, and may not have any record of any violation of the Act.

Associate Directors – Applicants must have at least two (2) years' experience in an administrative position in a public or approved private postsecondary school, and may not have any record of any violation of the Act.

Financial Aid Directors – Applicants must have at least five (5) years' experience in an administrative position in the financial aid office of a public or approved private postsecondary school, and may not have any record of any violation of the Act. Also, within the previous two (2) years, applicants must have completed a seminar or workshop on financial aid programs and policies certified by the California Student Aid Commission.

Financial Aid Officers – Applicants may not have any record of any violation of the Act and, within the previous two (2) years, must have completed a seminar or workshop on financial aid programs and policies certified by the California Student Aid Commission.

Instructors – Applicants must have at least three (3) years' experience and training or education in the occupation or job category for which the certification is sought. If the

[83] Section 94920

application is for service as an instructor for a program that leads to a degree, applicants must hold an equal or higher level degree in the same occupation as which certification is sought. Applicants may not have any record of any violation of the Act.

The Reform Act enables the Bureau to impose additional requirements by regulation. However, the Reform Act does not provide the Bureau with any flexibility with respect to application of these standards. As a result, a retired senior executive of a Fortune 100 technology company would not be able to obtain a COA from the Bureau to serve as a Director or Associate Director of a non-degree-granting private postsecondary technology training school unless they had at least three (3) years' experience in an administrative position in a public or approved private postsecondary school.

Certificates of Authorization are valid for three (3) years from the date of issuance. During this period, financial aid directors, financial aid officers, and instructors must complete three (3) units of in-service training in their education, job title category, or employment field through in-service training offered by accrediting associations, professional organizations, or Bureau-approved programs.

The Instructor COA application form currently used by the Bureau requires that applicants indicate the title(s) of the course(s) they plan to instruct. Previous versions of this form requested other types of descriptors of applicable type(s) of program(s) or course(s). Currently, applicants can provide whatever course names they choose as the Bureau has not developed or adopted an existing standard classification framework for use by applicants.

Currently, there are a total of nearly 19,000 active COAs. As shown by **Table 26**, on the next page, the Bureau currently issues nearly 6,000 COAs per year, about 10 percent fewer than were issued by the predecessor Council during 1994 (6,500). The number of COAs issued by the Bureau has increased by 25 percent over the past five (5) years. Instructors consistently account for about 90 percent of all COAs issued.

Partially because of the large number submitted, there are usually some backlogs of pending COA applications. When staff absences or turnover occur, Bureau managers have sometimes had to assist with processing these applications in order to prevent additional backlogs from accumulating. By regulation, the Bureau is required to inform applicants in writing, within 10 days, whether their application is complete and accepted for filing or, if deficient, what information is required. The Bureau also is required to issue a certificate of authorization within 30 days following receipt of a complete application if the application meets the standards established in the Reform Act and is not denied.[84] The Bureau generally does not meet these standards. As of mid-July, the Bureau had about a five-week backlog of pending COA applications.

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[84] Title 5, California Code of Regulations, Chapter 5, Section 73680

Table 26
COA Approvals By Category By Year

Category	Current Active	2000/01	2001/02	2002/03	2003/04	2004/05	5-Year Average
Instructor	14,697	4,344	4,104	4,043	5,205	4,906	4,520
Instructor - Truck Driving	163	0	0	2	104	59	33
Director	2,529	63	163	36	421	393	215
Interim Director	71	31	76	54	16	0	35
Associate Director	711	23	62	11	140	111	69
Financial Aid Director	205	52	67	71	68	58	63
Interim Financial Aid Director	4	0	2	0	0	0	0
Financial Aid Officer	413	90	151	112	149	154	131
Not Identified	58	11	34	6	50	79	36
Total COA Approvals	**18,851**	**4,614**	**4,659**	**4,335**	**6,153**	**5,760**	**5,104**

Source: SAIL System Reports.

In most cases, COA applications are approved by the Bureau after screening the application to detect any obvious defects or discrepancies. The Bureau generally does not verify or confirm any of the information or documents submitted. The Bureau also does not verify that CE requirements are fulfilled. There is no COA renewal process that would enable the Bureau to validate whether CE requirements were fulfilled during the preceding three-year period. Instead, each application is considered an original application and, as a result, CE requirements are not yet applicable. The Reform Act does require that certificate holders maintain validated CE transcripts at the institution where they are employed.[85] The extent to which certificate holders comply with this requirement is unknown.

A $55 fee is required to be submitted with each COA application. **Table 27**, on the following page, shows COA program revenues for the past four (4) years. As shown by Table 27, more than $325,000 in COA application fees was collected each of the past two years. The amount of COA fees collected is at least three (3) to four (4) times greater than the total costs of administering the COA Program.

[85] Section 94920(e)

Table 27
Certificate of Authorization Program Revenues

Certificate Category	*2001/02*	*2002/03*	*2003/04*	*2004/05*
Instructor	$223,744	$274,874	$289,518	$287,190
Financial Aid Officer	10,990	12,395	11,205	12,955
Director/Associate Director	29,923	29,258	29,304	27,995
Copy	1,475	790	1,265	1,592
Total COA Fees	**$266,132**	**$317,317**	**$331,292**	**$329,772**

Source: SAIL System Reports.

M. Agent Permits

The Reform Act defines an agent as a person who, at a place away from the institution's premises or site of instruction, for consideration, solicits, promotes, advertises, offers, or attempts to secure enrollment for an institution, refers any person to that institution, either for enrollment or to receive a solicitation for enrollment, or accepts application fees or admissions fees for education in that institution. The Reform Act requires that agents (1) hold a valid permit issued by the Bureau, and (2) maintain a $25,000 surety bond that extends over the term of the permit. Separate permits and bonds are required to be obtained for each institution represented.[86]

To obtain a permit, agents are required to submit an application to the Bureau containing a signed statement acknowledging that they have read the Reform Act and the Bureau's regulations. The Bureau is prohibited from issuing a permit to any person that has been previously found in any judicial or administrative proceeding to have violated the Reform Act, or if there are any grounds for denial as set forth in Section 480 of the Business and Professions Code.

Violations of specified standards of conduct by an agent can be punishable by imprisonment in a county jail for up to six months or imposition of a fine not to exceed $5,000, or both. The Reform Act also provides for recovery of attorney's fees and costs, award of damages, and assessment of a civil penalty of up to two times the amount of damages sustained by the student in cases where a student prevails in a civil action involving an agent's violation of the Reform Act.

The Reform Act and the Bureau's regulations specify that permits are valid only for the year in which they are issued. Therefore, all permits are issued with a December 31st expiration date. Consequently, the number of active permits is always lowest at the beginning of a calendar year, and highest near the end of the calendar year.

As shown by **Table 28**, on the following page, during 2004/05 the Bureau issued 1,423 permits, including 530 new permits. This was more than twice as many permits as were issued during either of the two previous fiscal years. The causes of this unusually large increase could not be fully determined. We did learn that one of the Bureau's larger approved institutions recently expanded its pool of registered agents, which may account for some of the increase in the number of applications received by the Bureau during the past year. Currently, there is no significant backlog of pending agent permit applications.

[86] Section 94940

Table 28
Agent Permit Applications Processed by Year

Disposition	*2002/03*	*2003/04*	*2004/05*
Approved	518	689	1,414
Withdrawn	0	2	9
Denied	0	15	0
Total	**518**	**706**	**1,423**

Source: SAIL System Reports.

As of July 2005, there were more than 690 registered agents holding nearly 1,100 permits. As discussed above, these numbers will increase throughout the year until December 31st when all of the permits will expire.

Agent permit application processing is performed by a single Office Technician position who sometimes has other assigned duties. Agent permit applications are nearly always approved by the Bureau after the applicant clears the DOJ's background check. In the case of permit renewals, the Bureau does not complete a background check, but does check to determine whether the agent is in compliance with the state's child support payment requirements.

The Bureau's regulations authorize assessment of an application fee of up to $125. The Bureau currently assesses a $100 application fee for all new agent permits, a $55 annual fee for a renewal of a single permit, and a $51 fee for renewal of any additional permits. The higher fee for new permit applications is intended to cover the additional costs associated with having the Department of Justice complete background checks on these applicants. Thereafter, the DOJ notifies the Bureau of any subsequent arrest reports for these same persons.

The Bureau's statutory authority to require submission of fingerprints with applications for agent permits could not be determined. Section 11105(i) of the Penal Code provides that "any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting "summary criminal history information" checks" that are authorized by law. Section 11105(a) of the Penal Code defines "summary criminal history information" as the record produced by the Attorney General's Office based on information maintained by the Department of Justice. However, there are no provisions in the Reform Act that authorize the Bureau to obtain "summary criminal history information." Thus, it is unclear that these provisions are operative in the Bureau's circumstances.

Separately, Section 94775 of the Education Code provides the Bureau with all of the powers and authorities granted under Division 1 (commencing with Section 100) of the Business and Professions Code. Within Division 1, Section 144 specifically enumerates 26 licensing boards, bureaus, and commissions where license applicants are required to furnish fingerprints so that the agency can, at its discretion, obtain criminal history information from the Department of Justice. However, the Bureau is not included in this listing. This would seem to suggest that the Bureau does not have this authority since, pursuant to Section 94774.5, it has the powers and authority granted under Division 1, which includes Section 144, but which does not authorize the Bureau to require its license applicants to furnish fingerprints or enable the Bureau to obtain criminal history information from the Department of Justice.

Finally, the Bureau has various statutory authorities to deny license applications, or suspend or revoke licenses, where the Bureau determines that the applicant or licensee has been convicted of a crime substantially related to applicable qualifications, functions, or duties of the business or profession for which the license is required. Therefore, the Bureau obviously has an interest in verifying that such convictions have not occurred which it is able to do by obtaining criminal history information from the Department of Justice. However, it is unclear that the Bureau currently has legal authority to require submission of fingerprints that are needed to obtain this information.

Table 29, below, shows Agent Permit fees for the past six (6) years. As shown by Table 29, there was a significant increase in the amount of agent permit fees collected during the past year. As discussed previously, we are unable to determine the causes of the recent increase in agent permit application submissions that generated this higher level of fee collections.

Table 29
Agent Permit Program Revenues by Year

Year	Amount
1999/00	$40,126
2000/01	$46,782
2001/02	$58,910
2002/03	$41,988
2003/04	$62,023
2004/05	$109,410

Source: SAIL System Reports.

Of the total fees collected during 2004/05, $53,000 was collected in connection with 530 new application submissions and, of this amount, approximately $24,000 ($45 per

application) was collected to fund the additional costs associated with having fingerprint record checks completed by the DOJ. However, actual DOJ fingerprint charges to the Bureau during FY2004/05 were only $15,456 ($29 per record).

Authorized staffing assigned to the Agent Permit Program currently consists of one (1) Office Technician position that also has other assigned responsibilities that account for about half of her time. The amount of fees collected during FY2004/05, net of amounts paid to the DOJ for fingerprint checks, is sufficient to fund all of the costs of this program.

N. Unapproved Institution Complaints and Investigations

Table 30, below, provides a statistical summary of the Bureau's unapproved institution complaint processing activities during the past five (5) years. As shown by Table 30, during 2003/04 and 2004/05, the Bureau received an average of about 200 complaints involving unapproved institutions. This compares to an average of about 300 complaints received during the preceding two fiscal years. Bureau staff estimate that about one-third of these complaints are received from students, one-third are received from competitors, and one-third are originated by Bureau staff.

Table 30
Unapproved Institution Complaints by Year

		2000/01	2001/02	2002/03	2003/04	2004/05
Total Complaints Received		**220**	**304**	**282**	**227**	**187**
Positive Closures	Compliance Obtained (e.g., submitted application)	77	115	64	52	29
	Mediated or Resolved By School	11	4	4	1	2
	Informal Warning Notice	1	3	0	4	2
	Referred to Education Specialist	0	0	1	0	0
	Referred To DA/AG	0	6	0	1	0
	Notice of Violation Issued (e.g., cite and fine)	1	0	0	0	2
Total Positive Closures		**90**	**128**	**69**	**58**	**35**
Total Non-Positive Closures (Unknown, Duplicate, Exempt, Insufficient Evidence, Non-Jurisdictional, Not Substantiated)		**180**	**176**	**335**	**230**	**182**
Total Complaints Closed		**270**	**304**	**404**	**288**	**217**

Source: SAIL System Reports.

Consistent with the decrease in the number of complaints received involving unapproved institutions, the number of complaints closed involving unapproved institutions also has decreased (i.e., from 404 complaint closures during 2002/03 to 288 complaint closures during 2003/04, and 217 complaint closures during 2004/05). During the past several years, the Bureau closed significantly more complaints involving unapproved institutions than were received. This reflects both a reduction in pending complaint backlogs during this period and an ongoing practice of reclassifying complaints involving approved institutions after it is determined that the institution is offering an unapproved program or course of instruction.

Following opening of the complaint, a notice is sent to the owner of the school suggesting that the school may be in violation of the law. In some cases, this prompts the

school to submit an application for approval or exemption, as appropriate. If a response from the school is not received within a specified timeframe, then additional notices are sent at various intervals. Unannounced site visits are sometimes performed, particularly in cases where the institution is not responsive to the Bureau's mailings. Ultimately, the Bureau is able to obtain compliance in 15 to 20 percent of the cases.

Most complaints involving unapproved institutions are closed without any further action. Often times the institution closes before an investigation is able to be completed and, as a result, Bureau staff are unable to substantiate the complaint. Since enrollment agreements with an unapproved institution are invalid, there is no mechanism for the Bureau to assist students in obtaining a refund of their tuition or other restitution. Instead, students are required to seek a legal remedy in small claims court (assuming the damages are $5,000 or less).

A full-time staff services analyst (SSA) position within the Compliance and Enforcement Unit is responsible for processing all complaints involving unapproved institutions. This individual is not a sworn peace officer, but has prior experience as an investigator with the Contractors State License Board.

At the time of our review, Bureau staff were not always able to verify the identity of and locate the owners of unapproved institutions because they did not have access to various research tools commonly available to state investigators, such as:

- Reverse telephone directories
- Unlisted telephone number directories
- Department of Motor Vehicle records
- Employment Development Department records
- Franchise Tax Board records.

The Bureau is currently attempting to address these deficiencies.

The Bureau no longer issues warning notices because it does not believe that it has the statutory authority to do so. In cases where the Bureau determines that an unapproved institution is operating, it can issue a citation. Bureau staff believe that the current statutes permit issuance of a citation with a fine of up to $2,500 per violation, or an order of abatement, but not both.[87] However, this statutory provision could possibly be interpreted differently.

Citations are rarely issued when the Bureau learns about an unapproved institution. Instead, the Bureau repeatedly attempts to bring the school into compliance with the law by encouraging the owners to submit an application for approval, registration, or exemption, as appropriate. This approach avoids potentially disenfranchising students who

[87] Section 94957

have already paid for an instructional program and, if successful, will subject the institution to all applicable laws and regulations. Also, students at unapproved institutions are not eligible for recovery of their tuition payments through the STRF Program in the event that the institution closes. Approval of the institution extends STRF tuition refund protections to the institution's enrolled students.

Since 1998, the Bureau has issued three (3) citations against unapproved institutions. In all three (3) cases, a $2,500 fine was also imposed. All of these citations were issued within the past two (2) years. Two of the citations involved truck driver training programs. The third involved a computer training program. To date, one of these citations has been paid, one has been appealed, and the third, after more than a full year, has not been either paid or appealed.

Section 148 of Chapter 1.5 of the Business and Professions Code potentially provides the Bureau with authority to establish, by regulation, a system for issuance of citations with fines of as much as $5,000 per inspection or investigation made with respect to the violation. In some cases, this could enable the Bureau to assess larger fines against unapproved institutions. However, the Bureau has not yet adopted regulations to provide it with this authority.

Orders of abatement are not generally utilized by the Bureau for these types of cases. The Bureau has no capability or legal mechanism to enforce an order of abatement in such cases. Instead, the Bureau would have to refer the case to the local district attorney's office for prosecution. However, the Bureau has not established regular communications and relationships with local district attorney's that would enable it to easily refer such cases to the appropriate persons at these agencies.

The Bureau's complaint tracking system shows that, within the past five (5) years, the Bureau has sometimes referred complaints involving unapproved institutions to a district attorney or the Attorney General's Office (i.e., six (6) complaints during 2001/02 and one (1) complaint during 2003/04). The Bureau does not maintain information about subsequent investigative or legal actions that may be taken following such referrals. Consequently, we were unable to ascertain what, if any, actions may have been taken pertaining to these complaints. A representative of the Los Angeles County District Attorney's Office recalls speaking with a representative of the Bureau several years ago regarding a case involving an unapproved institution, but was unable to accept the referral because the case had not been properly investigated or prepared.

Currently, there is no significant backlog of pending complaints involving unapproved institutions. As of mid-July 2005, there were only 38 pending complaints of this type.

O. Approved Institution Complaints and Investigations

Currently, five (5) filled SSA positions within the Bureau's Enforcement and Compliance Unit are assigned responsibility for processing complaints involving approved institutions. One of the SSA positions is dedicated primarily to performing initial complaint intake processing functions. The remaining four (4) SSAs primarily perform complaint mediation and initial investigation functions. Additionally, the Unit has one (1) filled Associate Government Program Analyst (AGPA) position that serves as a lead for the Unit. None of these positions are sworn peace officers and none of the current incumbents have prior experience as an investigator or formal training in performing investigations.

On an annual basis, the Bureau currently receives about 700 complaints involving activity at an approved institution. Most of these complaints are received from students and involve disputes concerning recruitment or admissions practices, the quality of education or instruction, or refunds. Often times, all of these issues are involved.

The Bureau classifies about 80 percent of these complaints as either contractual or fraud. Contractual violations usually involve quality of instruction, unjustified termination, and failure to make a timely refund. Fraud violations usually involve false or misleading advertising, admission process irregularities, and lack of instruction. Because there are usually multiple issues involved, it is difficult for staff to categorize complaints as either contractual violations or fraud. As a result, the assignment of complaints to these categories is largely arbitrary and, in many cases, there are no substantive differences in the nature of the complaints that are assigned to one category versus the other. The other complaint categorizations used by the Bureau are health and safety, incompetence/negligence, non-jurisdictional, and unprofessional conduct. Of these, the non-jurisdictional categorization is the most commonly used and, on average, accounts for about 10 percent of all complaints received. Most of the non-jurisdictional complaints involve civil rights issues and are usually referred to the U.S. Department of Education. A comparatively small number of these non-jurisdictional complaints involve WASC-accredited institutions, and are referred to WASC, as required by the Reform Act.[88]

Following receipt of a complaint against an approved institution, Bureau staff usually construct a summary of alleged violations and submit it to the institution for a response along with a request for documentation that might substantiate or refute the allegations. In most cases the institutions research the allegations and submit a written response to the Bureau within a few weeks. Subsequently, Bureau staff review the institution's response and, if necessary, discuss the issues further with the student and/or the institution. Site visits may also be performed. Due to a large backlog of about 300 pending cases, the review of the institution's response generally is not initiated until at least several months

[88] Section 94960(d)

after it is received. The Bureau's entire complaint investigation process is heavily dependent upon the good faith efforts of the schools to properly investigate the issues and, if a violation has occurred, to correct the problem and advise the Bureau accordingly.

During 2004/05, 10 percent of complaints involving approved institutions were closed following resolution of the disputed issues. In prior years, a somewhat higher percentage of complaints involving approved institutions were closed following resolution of the disputed issues (e.g., 15 to 25 percent of all closures). Most of the remaining complaints are closed without further action (e.g., insufficient evidence, not substantiated, or non-jurisdictional). Closing letters documenting results of the Bureau's investigation are prepared in all cases, and issued to the parties involved.

In a small percentage of cases, Bureau staff determine that a violation has occurred and issue a closing letter documenting their finding(s) using the same format as is used for closing complaints where the allegations are not substantiated. In some cases these complaints are assigned a Warning Letter or Notice of Violation disposition, but there is no legal basis for either of these classifications. The Bureau also does not issue formal warning letters because it does not have specific legal authority to do so.

In cases where the Bureau determines that a violation has occurred, it has legal authority to issue a citation. Bureau staff believe that the current statutes permit issuance of a citation with a fine of up to $2,500, or an order of abatement, but not both.[89] However, this statutory provision could possibly be interpreted differently.

Since 1998, the Bureau has issued only two (2) citations against approved institutions. Both of these citations were issued within the past 18 months. In each case an order of abatement also was issued. One of the cases involved maintenance of attendance records at a digital art school. The second case involved an institution with a temporary approval to operate which was authorized to offer dozens of degree and non-degree programs, but was also offering seven (7) unapproved programs or courses.

Section 125.9 of Chapter 1.5 of the Business and Professions Code potentially provides the Bureau with authority to establish, by regulation, a system for issuance of citations with fines of as much as $5,000 per inspection or investigation made with respect to the violation. In some cases, this could enable the Bureau to assess larger fines against approved institutions. However, the Bureau has not yet adopted regulations to provide it with this authority.

The Bureau believes that it does not have legal authority to order an approved institution to refund or make other restitution to a student. Therefore, in cases where Bureau staff believe that a refund or other restitution should be provided, a

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[89] Section 94957

"recommendation" is sometimes issued. Generally, the Bureau does not follow up with the institution or student to ascertain whether the Bureau's "recommendation" was accepted, or whether a refund or other restitution was actually provided. Information regarding the amount of refunds, or value of other types of restitution provided to students, is not consistently collected or maintained by the Bureau. Staff estimate that less than $25,000 in refunds is obtained per year.

Prior to being advised that it did not have legal authority to order refunds, Bureau staff would often issue more strongly worded "recommendations" regarding refunds, or would "order" institutions to provide such refunds. Bureau staff believe that the restrictions recently imposed on their ability to "order" refunds have contributed to the reduction in number of cases closed with a "mediated" or "resolved by school" disposition.

In some cases, information concerning a complaint involving an approved institution is forwarded to the Educational Specialist responsible for reviewing and approving the institution's applications (e.g., approval to operate, reapproval, add course/program, etc.). Often times this is done to "leverage" the Bureau's licensing authority in order to obtain a desired concession from the institution (i.e., get the school to issue a refund or provide other restitution to the complainant). The Bureau does not track follow-up actions that may be taken in connection with such referrals to the Educational Specialists. As a result, we are unable to determine either the frequency with which this occurs or the outcomes that result. Where a concession is sought by the Bureau, the schools have no formal mechanism available for obtaining an impartial review of the Bureau's action, and generally must accommodate the Bureau's determination or risk delay and disruption to their business as a result of actions taken by Bureau staff in connection with pending or prospective applications involving their school.

Exhibit 7, on the next page, provides a statistical summary of the Bureau's approved institution complaint processing activities during the past five (5) years. As shown by Exhibit 7, during the past year the Bureau closed 200 fewer complaints involving approved institutions than were received. During 2004/05, the total number of pending complaints increased to more than 360 (60 to 70, or more, per assigned analyst).

Exhibit 7
Approved Institution Complaints

	2000/01	2001/02	2002/03	2003/04	2004/05	5-Year Average
Total Complaints Received	**475**	**685**	**681**	**687**	**769**	**659**
Contractual Violations and Fraud						
Mediated or Resolved By School	112	89	181	120	53	111
Compliance Obtained	0	1	6	7	3	3
Warning Notice	2	1	1	8	6	4
Referred to Education Specialist	5	6	13	9	0	7
Referred to DOI or AG/DA	1	1	0	0	0	0
Notice of Violation, Cite & Fine, or Order of Abatement	7	11	6	12	11	10
Total Positive Closures	**127**	**109**	**207**	**156**	**73**	**134**
Total Non-Positive Closures (Unknown, Duplicate, Exempt, Insufficient Evidence, Non-Jurisdictional, Not Substantiated)	**208**	**281**	**425**	**457**	**371**	**348**
Total Contractual Violation and Fraud Closures	**335**	**390**	**632**	**613**	**444**	**483**
Non-Jurisdictional						
Total Positive Closures (Resolved By School)	3	0	0	0	0	1
Total Non-Positive Closures (Unknown, Exempt, Duplicate, Insufficient Evidence, Non-Jurisdictional)	43	73	73	27	68	57
Total Non-Jurisdictional Closures	**46**	**73**	**73**	**27**	**68**	**57**
Other						
Total Positive Closures (Mediated, Resolved By School, Warning Notice, Referred to Education Specialist, Notice of Violation)	5	13	5	16	7	9
Total Non-Positive Closures (Unknown, Duplicate, Exempt, Non-Jurisdictional, Insufficient Evidence, Not Substantiated)	66	52	87	90	44	68
Total Other Closures (Health & Safety, Incompetence, Negligence, Unknown)	**71**	**65**	**92**	**106**	**51**	**77**
Total Closed Complaints	**452**	**528**	**797**	**746**	**563**	**617**

Source: SAIL System Reports.

Exhibit 7 also shows that, on average over the past five (5) years, nearly 80 percent of complaints involving approved institutions had non-positive closing dispositions (e.g., unsubstantiated, insufficient evidence, non-jurisdictional, exempt, duplicate, or unknown). Fewer than 20 percent of the complaints were successfully mediated. In about five (5) percent of the cases, Bureau staff determined that a violation of the Reform Act occurred, but rarely initiated any formal administrative action in connection with such cases. As discussed previously, in 2004/05 a higher percentage of complaints were closed with a non-positive closing disposition, and a lower percentage of cases were successfully mediated.

Section 94960(b)(2) requires that the Bureau adopt regulations governing complaint handling and disclosure, and make every reasonable effort to convene the first public hearing its proposed regulations prior to June 30, 2002 (more than three years ago). The Bureau is currently preparing these proposed regulations, but has not yet submitted them to the OAL.

Section 94960(b)(3)(A) requires that the complaint handling regulations provide "a procedure for handling student complaints by mail that affords the institution that is the subject of the complaint an opportunity to respond." The Bureau's current complaint handling procedures are consistent with this requirement. However, Section 94960(b)(3)(B) requires that the Bureau also provide additional options, including teleconferencing and "… an administrative law hearing and a complaint resolution hearing conducted by the bureau program administrator or his or her designee."

It is unclear how the Bureau would staff the administrative law and complaint resolution hearings in the event that regulations requiring such hearings are eventually adopted as an alternative to handling the complaints by mail. It also is not clear why, in addition to conventional complaint mediation and investigation processes, all of the following alternative complaint resolution processes should be necessary:

- Teleconferencing
- Administrative law hearings
- Complaint resolution hearings
- Voluntary arbitration hearings.[90]

It also is not clear that the outcomes from any of these alternative processes would be any different than could be achieved through a properly structured and staffed conventional complaint mediation and investigation program, or that the complaints would be resolved more quickly or at a lower cost by using the alternative processes.

[90] Section 94778

P. Voluntary and Mandatory Arbitration Procedures

Section 94778(b) of the Reform Act requires that the Bureau:

> ". . . adopt regulations establishing a voluntary arbitration process similar to that set forth in Article 6.2 commencing with Section 7085 of Chapter 9 of Division 3 of the Business and Professions Code for the resolution of disputes between an institution approved to operate under this chapter and a complainant or complainants."

Section 7085 of the Business and Professions Code refers to a voluntary arbitration program administered by the Contractors State License Board (CSLB) for disputes involving claims having a value of $7,500 to $50,000. Disputes involving claims having a value of less than $7,500 are subject to a mandatory arbitration program that the CSLB also administers. All contractors are required to agree to participate in the state's mandatory arbitration program as a condition of licensure. However, if the parties have previously agreed to private arbitration, then they are exempted from participation in the CSLB's arbitration programs.

To date, the Bureau has not adopted regulations to establish a voluntary arbitration program. Draft regulations were prepared by the Bureau during 2002 but were delayed in part due to the unavailability of staff within the Office of Administrative Hearings to conduct arbitration hearings. Additionally, there were unresolved issues regarding whether to submit these regulations separately or as part of a package that would also include regulations regarding the inclusion of mandatory binding arbitration provisions in enrollment agreements.

With respect to the inclusion of mandatory arbitration clauses in enrollment agreements, Bureau staff disagree as to whether the Reform Act prohibits such practices and, if prohibited, whether:

- Such prohibitions would be enforceable under applicable federal statutes (i.e., the *Federal Arbitration Act*)
- The Bureau can deny an application if the institution's enrollment agreement contains such a clause.

With respect to the mandatory arbitration issue, Bureau staff cite Sections 94876, 94877(b) and 94877(f) of Article 7 (*Maxine Waters Act*) which state that:

> "No student may waive any provision of this article. Any waiver or limitation of any substantive or procedural right or remedy is in violation of this section and is void and unenforceable"
>
> "… a student may bring any action for a violation of this article …"
>
> "Any provision in any agreement that purports to require a student to invoke any grievance dispute procedure established by the institution or any other

> procedure before bringing an action to enforce any right or remedy is void and unenforceable."

With respect to these provisions, it has been the opinion of some DCA and Bureau staff that the phrase "grievance dispute procedure" is intended to encompass "arbitration" agreements. Other DCA and Bureau staff have taken the position that arbitration is not a "grievance dispute procedure" and that, in any event, the Reform Act does not expressly prohibit schools for incorporating a mandatory arbitration provision in their enrollment agreements. With respect to this latter point, it is further argued that, if the Legislature had intended to prohibit schools from including mandatory arbitration provisions in their enrollment agreements, it could have made that clear by specifically incorporating that term into Section 94877(f) of the Reform Act.

The Attorney General's Office previously advised the predecessor Director of Consumer Affairs regarding some of these issues. For example, the Director was advised that regulations were not necessarily needed to deny applications in cases where the institution had included a mandatory arbitration provision in their enrollment agreement because the Bureau could implement that provision "directly" and, in fact, was required by statute to do so. Additionally, the Attorney General's Office advised the Director that the prohibition on inclusion of mandatory arbitration agreements in enrollment agreements may not conflict with provisions of the Federal Arbitration Act because the enrollment agreements may not substantively affect interstate commerce.

The Bureau prepared draft regulations in 2002 and concurrently considered sponsoring legislation in order to clarify the mandatory arbitration issue. At the time, the DCA had an uncodified policy opposing mandatory binding arbitration under any circumstances and, consistent with this policy, favored a ban on any such provisions in enrollment agreements at Bureau-approved institutions. Accordingly, the Bureau's draft regulations would have defined "grievance dispute procedure" as meaning:

> "… any method of alternative dispute resolution independent of a court action, including arbitration, mediation, or an institution's administrative procedures…"

The draft proposed regulations, which would have established the voluntary arbitration program and would also have addressed the mandatory arbitration issue, were expected to be submitted to the OAL in early 2004. The draft proposed regulations for the voluntary arbitration program provide for referral of the cases to an independent arbitrator or arbitration association approved by the Bureau. However, in response to State and Consumer Services Agency concerns and the requirements of Executive Order S-2-03, the Bureau suspended its plans to submit the proposed regulations for approval. No further action pertaining to these proposed regulations has been taken since that time. It is not known whether OAL would accept these proposed regulations, if submitted.

Q. Student Tuition Recovery Fund

The Bureau administers the Student Tuition Recovery Fund (STRF) which is used to relieve or mitigate enrollment fee losses incurred by students who enroll in private postsecondary institutions that close prior to the student's completion of their education. The STRF may also be used to reimburse students in cases where a determination has been made that the school has breached the enrollment agreement, including anticipatory breach, or where the school committed fraud during the solicitation or enrollment of the student or during the student's participation in the institution's program of instruction. Additionally the STRF may be used to reimburse students after obtaining a judgment against an institution for a violation of the Reform Act, subject to fulfillment of specified conditions.[91] STRF claims are rarely received in cases other than those involving closed institutions.

The Bureau's STRF Unit reviews claims for STRF reimbursements and related substantiating documentation such as applications, enrollment agreements, contracts, receipts for tuition or cancelled checks, and attendance records. The Reform Act requires the Bureau to pay these claims within 60 days of receipt of a completed application. The Bureau may extend the time period for payment up to an additional 90 days if needed to investigate the accuracy of the claim.[92] The Bureau rarely pays claims within these timeframes.

The STRF is funded by fees that schools are required to collect from students. The current fee is $2.50 per $1,000 of tuition charged as determined based on the amount of tuition paid for the current calendar year.[93] The fee is required to be assessed as tuition is paid or loans are funded on behalf of the student, and is required to be remitted to the Bureau during the quarter immediately following the quarter in which the fees are collected. Institutions may waive the student assessment and assume the STRF fee as a debt of the institution. There is no requirement that the institutions deposit STRF collections into a specially designated trust or other fund pending remittance of the fees to the state. Students enrolled at registered or exempted institutions generally are ineligible to participate in the STRF Program.

There is an exemption from the STRF Program for institutions that receive all of their payments for students' charges from third-party payers. Students that receive third-party payer benefits for their charges are not eligible for benefits from the STRF.

An exemption from the STRF Program may be also obtained by non-WASC regionally accredited institutions, except for schools of cosmetology and institutions that offer

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[91] Section 94944(a)

[92] Section 94944(b)

[93] Section 94945(a)(3)(B)

vocational or job training programs, provided that they (1) meet student tuition indemnification requirements of a California state agency, (2) obtain a surety bond or insurance policy protecting their students against loss of paid tuition, or (3) demonstrate to the Bureau that they have established an acceptable alternative method of protecting their students against loss of prepaid tuition. Non-WASC regionally accredited institutions are not using any of these three alternative methods.

Authorized staffing for the STRF Unit consists of:

- 1 Associate Government Program Analyst (Lead)
- 3 Staff Service Analysts (1 vacant)
- 1 Office Technician (1 vacant).

All three (3) of the incumbent staff recently advised the Bureau that they are transferring to positions at other State agencies.

The Bureau is currently paying some STRF claims that were submitted more than two (2) years ago. The Bureau was unable to pay these claims sooner because its claim payment activities were suspended during 2000 due to depletion of the STRF's reserve funds. In response to these circumstances, the Bureau imposed a special assessment. However, the Bureau's authority to impose the special assessment was challenged by the industry. Subsequently, legislation was enacted modifying the program's fee structure. Concurrently, the industry's lawsuit against the Bureau was withdrawn and the Bureau resumed processing the large backlog of STRF claims that had accumulated during this period.

1. STRF Accounts

The Reform Act requires that the Bureau establish separate accounts for non-degree and degree institutions for purposes of segregating STRF assessment collections and paying STRF claims. A third account is required to be established for institutions that exclusively charge enrolled students a total charge of less than $1,000.[94] The Reform Act also establishes maximum amounts that the Bureau is permitted to accumulate in the non-degree and degree accounts ($4.5 million and $1.5 million, respectively).[95] The Reform Act does not specify a maximum amount that can be accumulated in the under $1,000 account. Very few institutions are classified in the under $1,000 category. During FY2004/05, the Bureau collected:

- $1.5 million in non-degree institution assessments
- $2.4 million in degree institution assessments
- $35,000 in under $1,000 institution assessments.

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[94] Section 94944(a)

[95] Section 94945(a)(6)

Current statutes do not permit crediting STRF accounts according to the type of program in which students are enrolled. Institutions that offer both degree and non-degree programs are always classified as degree-granting institutions, irrespective of the number of students enrolled in each type of program. Degree-granting institutions that begin offering non-degree programs continue to have all of their STRF fees credited to the degree account, including fees collected from students enrolled in their non-degree programs. Non-degree-granting institutions that add a degree program are reclassified as degree-granting institutions and, following this, all of their STRF fees are credited to the degree account. The Bureau does not collect data regarding the number of students enrolled at degree-granting institutions that are participating in non-degree programs, or know whether the number or proportion of such students has changed over time. Consequently, it cannot be determined whether there has been an increase over time in the amount of STRF fees credited to the degree account that have been collected from students enrolled in non-degree programs at degree-granting institutions.

2. Assessment and Payment Reviews, Verifications, and Audits

Bureau staff rarely request substantiating documentation from an institution for purposes of verifying an institution's enrollment and tuition payments, and associated STRF assessments and remittances. Bureau staff rarely audit these same types of records at an institution's business offices. In some cases, Bureau staff screen the standard form reports that are submitted by institutions in conjunction with their STRF assessment payments. If there are obvious defects or discrepancies in the calculations, this may trigger a request that the institution provide corrected information and/or supporting documentation. As part of the Bureau's reapproval process, staff sometimes verify that STRF fees have been paid on a periodic basis, but do not routinely perform any other verification or auditing activities that would determine whether the amounts remitted are correct.

Section 94946 provides that an institution's willful violation of the provisions governing collection and payment of STRF assessments is subject to lose of rights to enforce the terms of any contract or agreement arising from the transaction in which the violation occurred. Also, the institution must refund any fees that it collected from the student. Section 94946 also provides that a willful violation of these same provisions may be grounds for the revocation of the institution's approval to operate. However, the Bureau does not have statutory authority to charge late fees or penalties against an institution for making late payments to the STRF, or for failure to remit payments due, except to possibly cite and fine the institution for the violation, which it has never done.

As a result of these circumstances, many Bureau staff, as well as some industry representatives, believe that many institutions routinely remit less than is actually owed, or nothing at all. Bureau staff believe, based on their past experience in cases where they

have obtained and reviewed substantiating records, that the Bureau probably only collects about 50 percent of the amounts that are actually owed.

3. STRF Account Balances

During 2004/05, the Bureau exhausted its available non-degree account funds and regularly used funds received from degree-granting institutions to pay claims involving closed non-degree institutions. As of June 30, 2005, $1.9 million of degree account funds had been used to pay non-degree claims. In anticipation of having a June 30, 2005, balance in the degree account in excess of the $1.5 million statutory limit, net of the $1.9 million used to pay non-degree claims, the Bureau notified all approved degree-granting institutions during April 2005 that they should suspend their collection and remittance of STRF assessments effective July 1, 2005.

The June 30, 2005, degree account balance, including $1.9 million used to pay non-degree claims, was $4.9 million (versus $3.1 million at the beginning of the year). Including amounts owed to the degree account, the end-of-year balance in the non-degree account was minus $1.9 million. The end-of-year balance in the under-$1,000 account was $32,000.

In July 2005, the Bureau implemented a new policy regarding payment of non-degree STRF claims. Pursuant to this policy, all claims dated prior to 2003/04 are continuing to be paid from degree account funds. Subsequent year non-degree claims (2003/04, 2004/05, and 2005/06) will be paid only to the extent that newly remitted non-degree funds are available to do so. By implementing this policy, the Bureau will be able to preserve current degree account funds for purposes of paying degree claims, if needed in the event of closure of a degree-granting institution.

The Bureau currently has no specific plan for restoring the degree account for funds used to pay non-degree claims. The Bureau is drafting legislation to enable it to deposit assessments into accounts by type of program rather than type of institution. This would enable the Bureau to use some assessments currently paid into the degree account, for students attending non-degree programs at degree institutions, for payment of non-degree claims. The amount of assessments that would be affected by the change is estimated to be relatively small.

4. Pending STRF Claims

According to Bureau staff, there is only a small amount of pending claims involving closed degree institutions. However, there are about 400 pending claims involving non-degree institutions. The estimated STRF liability associated with the pending non-degree claims is $6 million. Because the Bureau has depleted its non-degree account, it does not have funds available to pay these pending claims. As discussed previously, the Bureau

currently collects about $1.5 million in non-degree STRF assessments per year (see Section Q.1). As a result, in the absence of a change to the statutes governing the STRF Program or imposition of a special assessment upon non-degree-granting institutions (see subsection 5, below), it is anticipated that many currently pending claims involving closed non-degree institutions will not be able to be paid for several years.

5. Special STRF Assessments

Section 94945(a)(4) of the Education Code provides that:

> "The bureau may levy additional reasonable assessments on an institution under this section only if these assessments are required to ensure that sufficient funds are available to satisfy the anticipated costs of paying claims pursuant to Section 94944."

Section 94956(a)(5)(A) provides that the Bureau may not levy a special assessment unless the balance in any account in the STRF falls below $250,000, as certified by the Secretary of the State and Consumer Services Agency. Section 94956(a)(5)(B) defines a special assessment as "a surcharge, collected by each institution from newly enrolled students, of up to 100 percent of that institution's regular assessment for four consecutive quarters." Finally, Section 94956(a)(5)(C) requires that the Bureau "provide at least 90 days' notice of an impending special assessment to each affected institution."

Even though the balance in the non-degree account has been below $250,000 for nearly a full year, the Bureau has not attempted to levy a special assessment. The Bureau is concerned that if it imposes a special assessment it will again be subject to court action, as occurred when it previously attempted to levy a special assessment during March 2000. However, it is not clear that the circumstances now are the same as existed previously.

When the Bureau previously imposed a special assessment, the additional assessment was paid by some institutions. Subsequently, as part of the settlement of the lawsuit against the Bureau regarding this matter, it was agreed that additional amount paid could be used to offset these institutions' future STRF liabilities. However, in some cases, the institutions that paid the special assessments are no longer required to participate in the STRF Program, or their participation level is very low relative to the additional amount paid. The Bureau is unable to refund these additional assessments to the institutions. Instead, the Bureau must continue to account for these "credits" on an institution-by-institution basis. In some cases, the Bureau expects that it will have to maintain these "credit" accounts for many years, and possibly into perpetuity.

6. STRF Administrative Expenses

STRF assessments are also used to fund administrative expenses associated with operating the STRF Program. Under current statutes, a maximum of $300,000 of non-

degree account funds and a maximum of $100,000 of degree account funds may be used to pay for the program's administrative expenses. However, the Bureau is required by statute to develop a plan of expenditure, and obtain the Department of Finance's approval of the plan, prior to expenditure of any amount in excess of $100,000 for administration of the program.[96]

Historically, the Bureau has been budgeted less than $100,000 for STRF administrative expenditures and, therefore, has "officially" expended less than $100,000 for these purposes. However, notwithstanding the above-described statutory caps and the Bureau's authorized budget for STRF Program administration, the Bureau's actual costs for administration of the STRF Program have usually been substantially in excess of $100,000, and possibly also in excess of the higher $400,000 cap. STRF Program administrative costs in excess of the amounts budgeted have been absorbed by the Bureau's 0305 fund for at least the past five (5) years.

The Bureau has never sought Department of Finance approval of an increase in the amount budgeted for STRF Program administration. For 2004/05, as a result of routine cost escalation factors built into the state's overall budgeting process, an amount in excess of $100,000 ($112,688) was budgeted for STRF administrative costs for the first time. It is unclear whether the DCA's standard budget submissions to the Department of Finance satisfy requirements for submission of a "plan of expenditure" as required by statute.

STRF administrative expenses are not allocated and charged to specific accounts within the STRF Fund. Instead, administrative expenses are charged to the aggregate fund balance. If STRF administrative expenses were allocated and charged to the non-degree, degree, and under $1,000 accounts in proportion to their respective portions of the program's total workload, then the deficit balance in the non-degree account would be several hundred thousand dollars larger than the minus $1.9 million amount currently reported.

[96] Section 94945(b)

R. Annual Reporting and Performance Fact Sheets and Disclosures

All approved institutions are required to furnish the Bureau with a report on an annual basis containing specified information concerning, where appropriate, student enrollment data, completion and placement rate data, and financial information. The Bureau does not screen, review, verify, or audit any of the data that is submitted. Bureau staff have determined that a significant number of annual reports are past due, and 25 to 30 percent of approved institutions are chronically delinquent in submitting these reports.

The enrollment and performance data that institutions are required to provide in their annual reports differs depending on whether or not the institutions are subject to Article 7 (*Maxine Waters Act*). For example, this data is required to be reported by non-Article 7 institutions on a calendar year basis, while Article 7 institutions are required to report the data on a fiscal year basis. Additionally, pursuant to Section 94808, all institutions are required to provide in their annual report to the Bureau data regarding:

- The number of students enrolled, by level of degree or type of diploma program
- The number of degrees and diplomas awarded, by level of degree
- The degree levels offered
- Program completion rates.

Pursuant to Section 94861, institutions subject to Article 7 must provide in their annual report to the Bureau, for all programs in the aggregate and for each program offered, data regarding:

- The percentage of students who successfully complete the institution's program(s)
- The percentage of students completing the program(s) who obtain employment within six (6) months after completing the course in the occupations or job titles to which the course of instruction was expected to lead.

Institutions that are not subject to Article 7 are also required to maintain and provide students with additional performance data that is not required to be submitted to the Bureau either as part of the institution's annual report, or separately. For example, pursuant to Section 94816, these institutions are required to provide, in their *School Performance Fact Sheet*, data regarding:

- The number and percentage of students who begin the institution's program and successfully complete the entire program
- The passage rates of graduates on any licensure or certificate examination required by the state for employment in the particular vocation, trade, or career field
- The number and percentage of students who begin the program and secure employment in the field for which they were trained
- The average annual starting wages or salaries of graduates of the institution's programs.

There is no equivalent to the *School Performance Fact Sheet* for institutions subject to Article 7 requirements. Instead, pursuant to Section 94859, these institutions are required to provide prospective students with various disclosures which parallel their specialized annual reporting requirements, including data regarding:

- The percentage of students who successfully complete the institution's program
- The percentage of students completing the program who obtain employment within six (6) months after completing the course in the occupations or job titles to which the course of instruction was expected to lead.

Table 31, below, provides a summary of annual report enrollment data submitted to the Bureau by approved institutions for 2002 and 2003. Data for a significant number of institutions has not yet been submitted to the Bureau for one or both of these years, and the institutions that submitted this data may not be representative of all approved institutions. This data suggests that about 400,000 students were enrolled at approved institutions during both years, consisting of about 300,000 students at non-degree-granting institutions and about 100,000 students at degree-granting institutions. Of these, about 30 percent (120,000) were enrolled in programs that are subject to Article 7 (*Maxine Waters Act*) requirements.

Table 31
Reported Enrollment at Approved Institutions

	Unverified, Self-Reported Enrollment	
Program Type	*2002*	*2003*
Non-Degree Programs[1]	244,051	146,992
Degree Programs[1]	93,922	106,614
Total Enrollment[1]	**334,974**	**253,606**
Enrollment in Programs Subject to Article 7 (*Maxine Waters Act*)	112,973	71,670
Estimated Percentage of Institutions Included	87%	50%

[1] Includes enrollment in programs subject to Article 7.

Source: SAIL System Reports.

Finally, Section 94861 requires the Bureau to develop standards and procedures for Article 7 institutions to submit their annual report information "electronically or on computer disk, in a standardized format." To date, the Bureau has not implemented this requirement. There is no similar statutory requirement pertaining to institutions that are not subject to Article 7 requirements.

S. Biennial Financial Reports

Section 94862 requires that all institutions subject to Article 7 file biennially with the Bureau a financial report that must be prepared in accordance with generally accepted accounting principles (GAAP) and, in some cases, reviewed or audited by an independent CPA.[97] These reports are required to include a balance sheet, statement of operations, statement of cash flow, and statement of retained earnings or capital,[98] and also establish whether the institution is in compliance with the financial standards and financial resource requirements that are applicable to institutions that are subject to Article 7 requirements. The report is also required to provide average monthly expenditure information.[99]

To date, the Bureau has never implemented this biennial reporting requirement. However, with the exception of the average monthly expenditure information, all institutions are required to prepare these same reports, but on a more frequent annual basis. Additionally, all institutions are required to submit their most recent annual report to the Bureau as part of any application submission.[100]

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[97] Section 94806(b)

[98] Section 94866(b)(3)

[99] Section 94806(b)

[100] Section 94802(a)(7)

T. Outreach and Education

The Bureau staff has not sponsored or participated in any substantive student outreach or education activities since its formation in 1998. The Bureau also has never conducted technical assistance workshops for industry representatives. Industry workshops were last held during 1994 when the predecessor Council conducted a series of regional workshops for degree-granting institutions to provide information regarding processes for applying for approval and reapproval, the site review process, and governing laws and regulations. Concurrently, workshops for approved non-degree institutions were held on a monthly basis in both northern and southern California.

U. Veterans Education Program (Title 38)

As the designated State Approving Agency (SAA) under Title 38 of the United States Code, the Bureau is responsible for approval of educational programs offered to veterans and other eligible persons at both public and private postsecondary educational institutions within the state. The Bureau is the largest SSA in the country in terms of number of active approved institutions (945) and enrollment (28,750 students).

Including two (2) recently redirected positions, a total of 12 authorized positions are currently allocated to the Bureau's Title 38 Unit, consisting of the following:

Title 38 Unit Management

1 Education Administrator

Northern California Region

- 2 Senior Educational Specialist
- 4 Educational Specialists
- 1 Staff Services Analyst

Southern California Region

- 1 Senior Educational Specialist
- 3 Educational Specialists

The recent re-direction of positions to the Title 38 Unit restores positions that were abolished during the hiring freezes and vacant position sweeps that occurred between 2001 and 2003.

The principal activity of the Title 38 Unit involves the conduct of annual supervisory visits to all active institutions, and preparation of reports documenting results of these visits. Additionally, staff conduct special technical assistance visits to selected institutions, as needed, and participate with the U.S. Department of Veterans Affairs (DVA) in conducting workshops for certifying officials. Staff also are expected to participate in periodic workshops and training sessions sponsored by the DVA for all SSAs. Often times, these events are held at locations outside of California.

All of the activities that are expected to be performed by the Title 38 Unit are set forth on an annual basis in a contract between the DVA and the Bureau, and are subject to detailed regulations set forth in the United States Code that are applicable to all SSAs. The contract also provides for reimbursement of allowable costs, which generally include all direct labor salary and benefit costs, allocated occupancy costs, operating expenses directly related to performance of the contract, and allocated Bureau administrative and management costs. Other types of indirect and overhead cost allocations generally are not reimbursable under the contract (e.g., departmental indirect and overhead costs and state pro rata).

On an annual basis, the DVA reviews each SSA's performance and issues a report documenting results of its review. In 2003, the Bureau received a "satisfactory" rating. Subsequently, in 2004, the Bureau received a lower "minimally satisfactory" rating. These

declining performance ratings were primarily due to a failure by the Bureau to complete all required site visits and prepare and submit associated site visit reports within proscribed timeframes. Also, Bureau staff did not attend regularly scheduled SAA training sessions sponsored by the DVA. More recently, the Bureau has not fulfilled significant contractual commitments involving performance of outreach activities.

In recent years, the Bureau has not utilized all of the authorized funding that was available under its contract with the DVA. The underutilization of authorized funding was primarily attributable to the impacts of various cost-saving measures that were implemented in response to the state's general fund budget crisis, including (1) hiring freezes, (2) vacant position sweeps, and (3) restrictions on travel expenditures. Even though all of its Title 38 expenditures would have been reimbursed by the federal government, the Bureau was unable to obtain exemptions from these actions and, consequently, did not have sufficient numbers of filled positions within the Title 38 Unit to enable it to fully utilize the funding that was available under its contract with the DVA. As shown by **Table 32**, below, over the past three (3) fiscal years the Bureau under-expended it's authorized federal contract funding by $572,761.

Table 32
Veterans Education Program Funding and Expenditures

Period	Allocated Federal Contract Funding	Actual Expenditures	Amount of Under Expenditure
07/02 to 09/02	$278,605	*Included Below*	*Included Below*
10/02 to 06/03	835,815		
Total 2002/03	**$1,114,420**	**$1,072,435**	**($41,985)**
07/03 to 09/03	$278,605	*Included Below*	*Included Below*
10/03 to 06/04	1,011,349		
Total 2003/04	**$1,289,954**	**$1,104,530**	**($185,424)**
07/04 to 09/04	$337,116	*Included Below*	*Included Below*
10/04 to 06/05	1,124,066		
Total 2004/05	**$1,461,183**	**$1,115,830**	**($345,353)**
Total (2002/03 through 2004/05)	**$3,865,556**	**$3,292,795**	**($572,761)**

Source: Title 38 Program Contracts and CALSTARS reports.

V. 0305 Fund Condition

Bureau funding is provided primarily by fees paid from regulated institutions. **Exhibit 8**, starting on the next page, summarizes Bureau revenues and expenditures for each of the past four (4) years for the 0305 Fund, the 0960 Fund (STRF), and the Title 38 Fund. As shown in Exhibit 8, the Bureau collects between $5.1 and $5.5 million per year in fees that are credited to the Bureau's 0305 fund, plus about $3.9 million per year in STRF assessments that are credited to the 0960 fund. Additionally, approximately $1.1 million is provided by the federal government for serving as the State Approving Agency for veterans' educational programs, thereby offsetting most Title 38 administrative and operating expenditures.

Bureau expenditures for program administration, excluding Title 38 administrative expenditures and payments of STRF claims, have substantially exceeded revenues on an annual basis for at least the past four (4) years. The cumulative 0305 Fund operating deficit over this period was $2.25 million. These deficits have nearly exhausted the Bureau's 0305 Fund reserve. As of June 30, 2005, the Bureau's 0305 Fund reserve was less than $269,000. At current expenditure levels, this is equivalent to less than three (3) weeks of operating expenses.

During 2004/05, the major components of the Bureau's 0305 Fund administrative expenditures were as shown in **Table 32** below:

Table 32
Summary of FY2004/05 0305 Fund Expenditures

Category of Expense	Amount (000s)	Percent
Wages, salaries, and benefits	$3,605	61%
DCA - Indirect cost allocations	951	17%
DCA – Data processing	212	4%
Facilities	502	9%
Attorney General's Office	248	4%
Other	275	5%
Total	**$5,802**	**100%**

Exhibit 8 *(page 1 of 4)*
Summary of Revenues and Expenditures By Fund By Fiscal Year

Category			0305 Fund			
			2001/02	2002/03	2003/04	2004/05
Revenues (CALSTARS)		Fees	$4,364,328	$5,071,219	$5,538,740	$5,394,225
		Federal Reimbursements	0	25,000	0	0
		Other Reimbursements	6,220	8,993	1,645	0
		Interest	63,048	21,180	13,341	16,590
		Unclaimed Warrants	0	0	0	3,825
		Prior Year Adjustments	(69,742)	(16,800)	(58,833)	(29,547)
		Total Revenues	**$4,363,854**	**$5,109,592**	**$5,494,893**	**$5,385,093**
Personnel Services	Wages and Salaries	Exempt and Permanent	$2,470,828	$2,582,523	$2,539,861	$2,473,243
		Temporary Help	189,107	196,453	37,496	140,330
		Overtime	44,187	27,053	21,882	22,728
		Total Wages and Salaries	**$2,704,122**	**$2,806,029**	**$2,599,239**	**$2,636,301**
	Benefits	Retirement	$84,597	$184,483	$360,029	$402,146
		Other Benefits	473,896	546,838	529,214	509,913
		Total Benefits	**$558,493**	**$731,321**	**$889,243**	**$912,059**
Operating Expenses		Facilities	$453,972	$477,819	$505,931	$501,823
		General Expense	172,879	136,739	165,150	123,361
		AGO	82,223	84,239	131,287	248,180
		Travel - In-State	94,449	67,308	54,141	68,219
		Travel - Out-of-State	2,187	0	0	0
		Equipment	6,011	13,087	37,805	27,478
		OE&E Adjustments	(68,124)	(46,454)	(92,331)	(100,910)
		Training	7,668	9,913	9,930	1,295
		Fingerprint Reports	0	6,768	9,738	15,456
		Data Processing	40,162	1,355	1,735	1,754
		OAH	195	3,322	5,205	12,069
		Tort Payments	16,646	5,590	225	1,000
		Other	873	24	225	3,831
		Total Operating Expenses	**$809,141**	**$759,710**	**$829,041**	**$903,556**
DCA Cost Allocations		Indirect, Including DOI	$904,037	$911,273	$957,204	$921,943
		Data Processing	255,674	210,199	266,957	212,873
		Communications	34,885	38,543	38,533	37,619
		Total DCA Cost Allocations	**$1,194,596**	**$1,160,015**	**$1,262,694**	**$1,172,435**
State Pro Rata			**$300,730**	**$121,465**	**$76,848**	**$178,146**
Total Administrative Expenditures			**$5,567,082**	**$5,578,540**	**$5,657,065**	**$5,802,497**
STRF Claim Payments			**$0**	**$0**	**$0**	**$0**
Surplus/(Deficit)			**($1,203,228)**	**($468,948)**	**($162,172)**	**($417,404)**

Source: CALSTARS Reports.

Exhibit 8 *(page 2 of 4)*
Summary of Revenues and Expenditures By Fund By Fiscal Year

Category			Student Tuition Recovery Fund (STRF)			
			2001/02	2002/03	2003/04	2004/05
Revenues (CALSTARS)		Fees	$664,549	$104,047	$7,190,335	$3,874,953
		Federal Reimbursements	0	0	0	0
		Other Reimbursements	3,774	2,705	1,967	0
		Interest	33,980	22,237	34,551	90,605
		Unclaimed Warrants	45,939	0	8,894	74,873
		Prior Year Adjustments	0	(465)	(60)	0
		Total Revenues	**$748,242**	**$128,524**	**$7,235,687**	**$4,040,431**
Personnel Services	Wages and Salaries	Exempt and Permanent	$33,138	$36,896	$40,858	$43,989
		Temporary Help	0	0	0	0
		Overtime	0	4,804	0	0
		Total Wages and Salaries	**$33,138**	**$41,700**	**$40,858**	**$43,989**
	Benefits	Retirement	$1,016	$3,091	$6,089	$7,488
		Other Benefits	5,426	8,666	8,425	7,529
		Total Benefits	**$6,442**	**$11,757**	**$14,514**	**$15,017**
Operating Expenses		Facilities	$1,020	$722	$0	$5,022
		General Expense	8,867	3,167	8,511	10,615
		AGO	0	0	0	0
		Travel - In-State	4,349	2,760	1,816	5,928
		Travel - Out-of-State	652	0	0	0
		Equipment	0	0	0	56
		OE&E Adjustments	0	0	10,000	0
		Training	155	630	0	(888)
		Fingerprint Reports	0	0	0	0
		Data Processing	0	0	0	0
		OAH	0	0	0	0
		Tort Payments	0	0	0	0
		Other	0	0	0	0
		Total Operating Expenses	**$15,043**	**$7,279**	**$20,327**	**$20,733**
DCA Cost Allocations		Indirect, Including DOI	$0	$0	$0	$0
		Data Processing	0	0	0	0
		Communications	0	0	0	0
		Total DCA Cost Allocations	**$0**	**$0**	**$0**	**$0**
State Pro Rata			**$2,339**	**$1,456**	**$0**	**$32,847**
Total Administrative Expenditures			**$56,962**	**$62,192**	**$75,699**	**$112,586**
STRF Claim Payments			**$306,423**	**$868,365**	**$4,333,546**	**$5,985,406**
Surplus/(Deficit)			**$384,857**	**($802,033)**	**$2,826,442**	**($2,057,561)**

Source: CALSTARS Reports.

Exhibit 8 *(page 3 of 4)*
Summary of Revenues and Expenditures By Fund By Fiscal Year

Category			Title 38			
			2001/02	2002/03	2003/04	2004/05
Revenues (CALSTARS)		Fees	$0	$0	$0	$0
		Federal Reimbursements	1,060,803	1,072,435	1,104,530	1,115,830
		Other Reimbursements	0	0	0	0
		Interest	0	0	0	0
		Unclaimed Warrants	0	0	0	0
		Prior Year Adjustments	0	0	0	0
		Total Revenues	**$1,060,803**	**$1,072,435**	**$1,104,530**	**$1,115,830**
Personnel Services	Wages and Salaries	Exempt and Permanent	$721,349	$766,472	$673,482	$655,366
		Temporary Help	0	0	0	28,959
		Overtime	264	0	992	1,558
		Total Wages and Salaries	**$721,613**	**$766,472**	**$674,474**	**$685,883**
	Benefits	Retirement	$25,308	$51,079	$95,816	$106,251
		Other Benefits	102,579	108,502	101,494	116,102
		Total Benefits	**$127,887**	**$159,581**	**$197,310**	**$222,353**
Operating Expenses		Facilities	$13,868	$21,526	$23,058	$21,409
		General Expense	68,680	25,069	28,819	35,891
		AGO	0	0	0	0
		Travel - In-State	57,917	37,937	33,633	40,510
		Travel - Out-of-State	2,174	1,451	0	3,830
		Equipment	0	13,945	3,513	10,110
		OE&E Adjustments	68,124	46,454	113,258	95,444
		Training	540	0	2,549	400
		Fingerprint Reports	0	0	0	0
		Data Processing	0	0	0	0
		OAH	0	0	0	0
		Tort Payments	0	0	0	0
		Other	0	0	0	0
		Total Operating Expenses	**$211,303**	**$146,382**	**$204,830**	**$207,594**
DCA Cost Allocations		Indirect, Including DOI	$0	$0	$0	$0
		Data Processing	0	0	0	0
		Communications	0	0	0	0
		Total DCA Cost Allocations	**$0**	**$0**	**$0**	**$0**
State Pro Rata			**$0**	**$0**	**$27,916**	**$0**
Total Administrative Expenditures			**$1,060,803**	**$1,072,435**	**$1,104,530**	**$1,115,830**
STRF Claim Payments			**$0**	**$0**	**$0**	**$0**
Surplus/(Deficit)			**$0**	**$0**	**$0**	**$0**

Source: CALSTARS Reports.

Exhibit 8 *(page 4 of 4)*
Summary of Revenues and Expenditures By Fund By Fiscal Year

Category			0305, STRF, and Title 38 Funds Combined			
			2001/02	2002/03	2003/04	2004/05
Revenues (CALSTARS)		Fees	$5,028,877	$5,175,266	$12,729,075	$9,269,178
		Federal Reimbursements	1,060,803	1,097,435	1,104,530	1,115,830
		Other Reimbursements	9,994	11,698	3,612	0
		Interest	97,028	43,417	47,892	107,195
		Unclaimed Warrants	45,939	0	8,894	78,698
		Prior Year Adjustments	(69,742)	(17,265)	(58,893)	(29,547)
		Total Revenues	**$6,172,899**	**$6,310,551**	**$13,835,110**	**$10,541,354**
Personnel Services	Wages and Salaries	Exempt and Permanent	$3,225,315	$3,385,891	$3,254,201	$3,172,598
		Temporary Help	189,107	196,453	37,496	169,289
		Overtime	44,451	31,857	22,874	24,286
		Total Wages and Salaries	**$3,458,873**	**$3,614,201**	**$3,314,571**	**$3,366,173**
	Benefits	Retirement	$110,921	$238,653	$461,934	$515,885
		Other Benefits	581,901	664,006	639,133	633,544
		Total Benefits	**$692,822**	**$902,659**	**$1,101,067**	**$1,149,429**
Operating Expenses		Facilities	$468,860	$500,067	$528,989	$528,254
		General Expense	250,426	164,975	202,480	169,867
		AGO	82,223	84,239	131,287	248,180
		Travel - In-State	156,715	108,005	89,590	114,657
		Travel - Out-of-State	5,013	1,451	0	3,830
		Equipment	6,011	27,032	41,318	37,644
		OE&E Adjustments	0	0	30,927	(5,466)
		Training	8,363	10,543	12,479	807
		Fingerprint Reports	0	6,768	9,738	15,456
		Data Processing	40,162	1,355	1,735	1,754
		OAH	195	3,322	5,205	12,069
		Tort Payments	16,646	5,590	225	1,000
		Other	873	24	225	3,831
		Total Operating Expenses	**$1,035,487**	**$913,371**	**$1,054,198**	**$1,131,883**
DCA Cost Allocations		Indirect, Including DOI	$904,037	$911,273	$957,204	$921,943
		Data Processing	255,674	210,199	266,957	212,873
		Communications	34,885	38,543	38,533	37,619
		Total DCA Cost Allocations	**$1,194,596**	**$1,160,015**	**$1,262,694**	**$1,172,435**
State Pro Rata			**$303,069**	**$122,921**	**$104,764**	**$210,993**
Total Administrative Expenditures			**$6,684,847**	**$6,713,167**	**$6,837,294**	**$7,030,913**
STRF Claim Payments			**$306,423**	**$868,365**	**$4,333,546**	**$5,985,406**
Surplus/(Deficit)			**($818,371)**	**($1,270,981)**	**$2,664,270**	**($2,474,965)**

Source: CALSTARS Reports.

In response to the Bureau's fiscal circumstances, Bureau and DCA management recently identified several potential expenditure reduction initiatives. If all of these initiatives are fully implemented, it could eliminate the Bureau's structural budget deficit. The initiatives being considered include:

- Adjusting the 0305 and 0960 (STRF) budgets to end the 0305 fund subsidy of STRF administrative expenditures, and to fully fund actual STRF administrative costs from the STRF fund. If fully implemented, this initiative could provide annual 0305 fund savings of **$275,000**. However, to actually realize these potential savings, the Bureau first needs to obtain approval of a Budget Change Proposal (BCP). Also, the STRF fund must have sufficient funds in both the non-degree and degree accounts to actually fully fund STRF administrative costs, subject to current statutory caps on the payment of administrative costs from each STRF fund account. As discussed previously, as of June 30, 2005, the STRF non-degree account balance, which has a $300,000 statutory cap on payment of administrative costs, was minus $1.9 million. Current statutes restrict payment of administrative costs from the degree account to $100,000 per year.
- Transferring positions and associated budget and expenditure authority from the 0305 fund to the Title 38 Program to make the expenditures eligible for reimbursement under the Bureau's contract with the federal government. If fully implemented, this initiative could provide annual 0305 fund savings of **$211,000**. To realize these 0305 fund savings, the Bureau must first obtain approval of a BCP.
- Eliminating the use of retired annuitants, seasonals, and other temporary help. If fully implemented, this initiative could provide annual 0305 fund savings of **$141,000**.

The DCA is planning to relocate to new offices during December 2005. The Bureau's costs for office space at the new location are expected to decrease by $225,000 per year beginning in 2006/07. No cost savings are expected to be realized during 2005/06 due to needs to fund related one-time relocation costs.

W. Bureau Annual Reports

Section 94995 requires that the Bureau submit a written report to the Legislature and the California Postsecondary Education Commission by January 31st of each calendar year. The report is required to summarize the Bureau's activities during the previous fiscal year, and must include (1) information relating to the Bureau's enforcement activities, and (2) statistics providing a composite picture of the private postsecondary educational community. Reports submitted by the Bureau to the Joint Legislative Sunset Review Committee (or successor Joint Legislative Committee on Boards, Bureaus, and Consumer Protection) during any calendar year, as required by Section 473 of the Business and Professions Code, can be used to satisfy this reporting requirement.

The Bureau's first Annual Report covering calendar year 1998 provided an overview of the Bureau and discussed various components of the state's regulatory and enforcement program. The report also discussed the Bureau's processing of STRF claims, the cross-subsidy of STRF administrative costs, and issues related to solvency of the STRF fund. A very limited level of statistical data covering both 1998 and 1999 was provided without any accompanying narrative discussion.

A second Annual Report covering fiscal year 2000/01 also was prepared by the Bureau. This report provided a limited overview discussion of the state's regulatory and enforcement program, a summary of the number of institutions regulated by the Bureau and enrollment at these institutions, and a profile of the Bureau's budget and staffing allocations. The report also provided some limited workload and backlog data for 1999/00 and, on a quarterly basis, for 2000/01.

The submission of various reports to the Legislature in connection with the Bureau's 2002 sunset review hearings fulfilled the Bureau's reporting requirement for 2001/02. The Bureau has not yet prepared Annual Reports covering either 2002/03 or 2003/04. These reports were due on January 1, 2004, and January 1, 2005, respectively.

X. Data Collection and Dissemination

See 94779.1(c) requires that the Bureau make additional improvements in its data collection and dissemination systems that will provide improved reporting of information regarding the private postsecondary and vocational education industry, and improved monitoring of reports, initial and renewal applications, complaint and enforcement records, collection of fees, and other information needed to effectively serve the Bureau's needs.

This statutory requirement was enacted during September 2003 and became effective on January 1, 2004. Since that time, the Bureau has continued to improve its SAIL system which is used to maintain information regarding all Bureau-approved institutions, and has the capability to capture statistical information provided by these institutions regarding their enrollment, completion rates, placement rates, etc. The SAIL system also has the capability to track the status of annual report submittals, initial and renewal applications, complaints, fee assessments and collections, and a broad range of other information that is potentially useful for various managerial and operational purposes. However, the Bureau does not yet fully utilize all of these capabilities, in part due to the fact that needed SAIL system management reports have not yet been fully developed.

Y. Complaint Disclosure

Section 94779 requires that the Bureau make available, upon request, information regarding the nature and disposition of all complaints on file with the Bureau against an institution. The Bureau's complaint disclosure procedures are a part of its overall procedures governing the handling of Public Records Act requests. The Bureau's Public Records Act procedures require disclosure of the following information regarding complaints:

- The number and disposition of complaints
- The date the Bureau received the complaint
- The date the Bureau closed the complaint file
- The nature of the complaint.

The procedures do not distinguish between closed complaints and pending complaints, or between complaints with different closing dispositions.

Information regarding complaints is not available on the Bureau's website. Persons interested in obtaining the above information must call the Bureau or submit a request for the information in writing. When telephone inquiries are received, staff will provide the requested information over the phone. Regarding the nature of the complaint, the Bureau's procedures specify that a brief sentence describing the general nature of the complaint is sufficient, such as "about poor instruction." Detailed information regarding the time, place, or particular course or instructor is not permitted to be disclosed.

The Bureau's Public Records Act Request Processing Procedures do not appear to specifically address requirements related to disclosure of administrative actions taken as a result of investigation of a complaint or in connection with other enforcement activities of the Bureau. It is not clear from the Bureau's current policies and procedures what information is required to be disclosed regarding citations, orders of abatement, or conditional approvals.

Z. Revision of the Reform Act

Section 94779.1(a) requires that the Bureau work together with the staff of the Joint Legislative Sunset Review Committee, along with representatives of regulated institutions, the California Postsecondary Education Commission, the California Student Aid Commission, students, and other interested parties, to revise the Reform Act to (1) streamline its provisions, and (2) eliminate contradictions, redundancies, ambiguities, and conflicting or unnecessary provisions. The Bureau also was directed to determine what changes to the Reform Act were needed to improve the type and timeliness of information that is required to be provided to the Bureau. Additionally, the Bureau was directed to evaluate the provisions of the Reform Act to determine what changes were needed to improve the effectiveness of the state's regulatory program, including the need to regulate out-of-state institutions that offer educational programs to California students via the Internet, and the feasibility of such regulation. Finally, the Bureau was directed to consider having accreditation by approved regional accrediting agencies replace some of the Bureau's approval requirements for degree-granting institutions, educational programs, or instructors.

The above statutory requirements were enacted during September 2003 and became effective on January 1, 2004.[101] There was no due date specified as to when any of these requirements needed to be fulfilled. To date, these requirements have not been addressed. As discussed previously, SB 967, which was enacted concurrent with SB 364 partially addressed SB 364 requirements related to the use of accrediting agency approvals to replace some of the Bureau's approval requirements.

Concurrent with enactment of SB 364, Bureau staff and other stakeholders participated in development of Preprint Senate Bill 1, dated October 16, 2003, which was expected to provide a foundation for responding to the above requirements. The primary changes proposed by Preprint SB 1 were to:

- Revise some of the Reform Act's defined terms
- Authorize submission of fingerprints for Instructor Certificates of Authorization
- Authorize the Bureau to issue sample language for any required notices, disclosures, or contract terms
- Authorize adoption of regulations for certification of organizations offering educational services over the Internet
- Establish a new process for submission of applications to amend a previously issued approval to operate, and for review and approval of these applications
- Increase the maximum period for payment of a refund to a withdrawing student
- Recast the provisions related to the calculation and payment of application and other fees

[101] SB 364, Figueroa

- Make it a crime for any owner, director, or managing officer of an institution to knowingly fail to obtain a required approval that results in denial of STRF benefits to a student
- Enable students enrolled in unapproved programs to take action against an institution and its owners, directors, and officers, for three (3) times the amount of the equivalent STRF claim, plus reasonable attorneys' fees, interest, and costs.

Preprint SB 1 immediately encountered opposition, and was never introduced. No substantive efforts have since been undertaken by the Bureau to revise the Reform Act's provisions or make other changes that would improve the effectiveness of the State's regulatory program.

AA. Accrediting Agency Reports

Section 94809 requires that all approved institutions provide the Bureau with copies of all accrediting agency reports within 15 days of receipt, and copies of the institution's written response to these reports within 15 days after the response is submitted. Additionally, accrediting agencies are required to notify the Bureau, within 30 days, of any accrediting agency action that establishes, reaffirms, or publicly sanctions the accreditation of any private postsecondary educational institution operating within the state, and to provide a copy of any public statements regarding the reasons for the accrediting agency's action. Bureau staff report that accredited institutions and accrediting agencies have usually fully complied with these reporting requirements.

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Chapter IV

Initial Conclusions and Recommendations

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IV. Initial Conclusions and Recommendations

This chapter of the report presents the initial conclusions and recommendations of the Operations and Administrative Monitor regarding all of the major components of the Bureau's regulatory program and administrative operations. All of the recommendations are compiled in the Executive Summary at the front of this report.

A. Statutory Framework

The statutory provisions governing the state's program for regulation of private postsecondary and vocational education institutions was created in 1989 by merging the provisions of SB 190 (Morgan) and AB 1420 (Waters). Since its creation, the *Private Postsecondary and Vocation Education Reform Act* has been consistently characterized as highly prescriptive, redundant, conflicting, confusing, and overly punitive. Legislative directives to streamline the Reform Act, make it more intelligible and enforceable, and eliminate contradictions, redundancies, ambiguities, and conflicting and unnecessary provisions, have never been implemented. Instead, subsequent amendments to the Reform Act have actually added to its complexity.

While there are many technical changes and improvements that could be made to streamline and simplify some parts of the Reform Act, such changes would not address various deficiencies that exist with the Reform Act's structural framework, and would have little impact on many of the problems currently being experienced. As discussed below, there are at least three significant structural deficiencies with the current Reform Act.

1. Multiple, Fragmented Regulatory Structures

A key contributor to the complexity of the Reform Act is the existence of different sets of standards and requirements for different categories of institutions. SB 190 provided for two separate sets of standards and requirements for (1) degree-granting institutions, and (2) non-degree-granting institutions. The merger of SB 190 with AB 1420 resulted in creation of three separate sets of standards and requirements for (1) degree-granting institutions, most of which are not subject to the *Maxine Waters Act*[102](2) non-degree-granting institutions that are not subject to the *Maxine Waters Act*, and (3) non-degree-granting institutions that are subject to the *Maxine Waters Act*. Subsequently, AB 71 (Wright) created a fourth set of standards and requirements for registered institutions. More recently, SB 967 partially exempted non-WASC regionally accredited institutions from the Bureau's approval processes, thereby creating a fifth set of rules that are

[102] There also are a small number of degree-granting programs that can be subject to *Maxine Waters Act* requirements (e.g., degree programs that are scheduled to be completed in less than two academic years or where the institution confers diplomas to students who do not complete the degree program).

applicable to those institutions. In recent years, it has become increasingly common for institutions to offer degree, non-degree, and registered programs. These circumstance further contribute to the complexity associated with administering this program, both for the Bureau and for the regulated institutions.

Some provisions of the Reform Act are applicable to all institutions. However, in some areas, some types of institutions are exempt from the general provisions that are applicable to all institutions because they are instead subject to similar provisions that are applicable to only a specific sub-set of institutions. There also are reverse exemptions that are intended to ensure that institutions that are subject to specialized requirements are not also subject to general requirements that are applicable to all institutions. Within the statute there are countless cross-references that are intended to ensure that regulated institutions are subject to, or exempt from, all of the other potentially applicable provisions. These cross-references make the Reform Act extremely difficult to read at even a superficial level, much less fully comprehend and understand. In some cases, the multiplicity of similar, or related, provisions is noticeably redundant or conflicting. However, these defects cannot be easily corrected or reconciled because they are necessary given the Reform Act's underlying structural framework. Technical clean-up of the current statutes, without accompanying structural change, will not substantively address the problems being experienced.

The creation of multiple, disparate sets of rules to govern different categories of private postsecondary educational institutions is inherently more complex than could be provided through a single, integrated, uniform set of rules that is applicable to all institutions, with targeted exemptions, where appropriate. An overhaul of the statutes is needed to address the root causes of many of the problems currently being experienced. The current, fragmented regulatory structure needs to be replaced by a consolidated system that is applicable to all non-degree and degree-granting institutions that require a full review and approval process, irrespective of whether the institutions offer non-degree or degree programs, or both.

2. Abbreviated Timeframe to Obtain Full Approval

A second major problem with the Reform Act's structural framework is the abbreviated 9- to 12-month timeframe provided for the Bureau to make a determination as to whether to issue a new institution a full approval to operate or deny the institution's application. During this abbreviated period, a new institution is issued a temporary approval to operate. Then, within 90 to 180 days, a site inspection is required to be performed and, within 90 days of completion of the site inspection or receipt of the visiting committee's report, or 180 days with extensions, a final decision on the application is required to be made by the Bureau. Among the problems with this approach are included the following:

- Institutions often times do not immediately commence operations after receiving a temporary approval to operate. In some cases, there may be significant delays between issuance of a temporary approval to operate and commencement of operations. In extreme cases, a full year, or longer, may elapse before the institution commences operations. Most institutions have operated for only a few months time, or less, at the point where the Bureau is required to make a decision on the application. These circumstances severely limit the scope of activity that can be reviewed as part of the Bureau's approval process.
- In many cases, the institutions have not yet completed delivery of a full program of instruction to a class of students because the duration of the program is longer than the elapsed timeframe between commencement of operations and the Bureau's site review of the institution.
- A 9- to 12-month timeframe is not a sufficient period of time for a new, start-up institution to sufficiently mature, demonstrate its financial capability to sustain its programs and operations, or for some critical requirements of the Reform Act to even become operative, such as submission of annual reports and annual fees. In these circumstances, there is limited information available on which to base a determination as to whether to issue a full approval to operate or, alternatively, deny an institution's application.
- Few institutions are able to achieve full compliance with all of the Reform Act's standards and requirements within an abbreviated 9- to 12-month timeframe. The Reform Act requires that the Bureau either issue a full approval to operate or close the institution by denying their application, which is not usually a reasonable action to take in the circumstances. Issuance of a conditional approval, subject to associated due process requirements, is not a viable option in these circumstances. Few new institutions would ever obtain an approval to operate if the Bureau actually required that the institutions achieve full compliance with all of the state's standards and requirements within 9 to 12 months of issuance of a temporary approval to operate.

The limited timeframe provided by the Reform Act prior to an institution obtaining a full approval contrasts sharply with the multi-year "candidacy" periods often imposed upon institutions seeking accreditation. Additionally, institutions seeking accreditation are often required to be approved by the state for a period of time prior to becoming eligible for the accrediting agency's "candidacy" status. Accrediting agencies also sometimes require that an institution graduate a class of students prior to becoming eligible for accreditation. In combination, institutions are required to operate on a continuous basis for a period of at least several years before they can be considered eligible for full accreditation. No similar requirements are applicable to the Bureau's approval processes.

A timeframe longer than 9 to 12 months, following issuance of a temporary approval, is needed to enable the Bureau to oversee a new institution as it matures and demonstrates its capability to fully comply with all of the state's standards and requirements. Alternatively, if a new institution is unable to demonstrate its capability to fully comply with all of the state's standards and requirements after a period of several years, then the Bureau would have a sufficient basis for issuing the institution a conditional approval to operate, or denying the institution's application.

3. Insufficient Sanctions or Penalties for Isolated Violations

A third major problem with the Reform Act's structural framework involves the absence of sufficient sanctions or penalties that can be imposed by the Bureau in response to findings that an institution has, in a single or limited number of instances, violated a standard or requirement. For example, when a complaint is received and it is determined that a violation has occurred that would entitle the student to a refund, the Bureau cannot require that the institution refund the student, even in cases where the student never signed an enrollment agreement. At the same time, the Bureau can only impose a maximum $2,500 fine against the institution (or possibly as much as $5,000 under separate authority provided in the Business and Professions Code, subject to the Bureau's adoption of regulations). In many cases, the maximum fine amount is less than the amount of the disputed refund. Also, if a fine is assessed and paid, then that violation can no longer be used as basis for disciplinary action against the institution. Additionally, in many cases, the maximum fines that can be assessed are insignificant in comparison to the institution's revenues and assets and, as a result, are not meaningful as either a penalty for non-compliance or a deterrent to future misconduct.

While larger fines can be imposed in cases involving multiple students or where multiple violations are found, such cases are not representative of the vast majority of complaints received by the Bureau. Also, cases involving multiple students or violations are more likely to be candidates for other types of disciplinary action, such as probation, suspension, or revocation. These types of disciplinary actions would not generally be applicable to most individual student complaint cases.

In summary, in many individual student complaint cases where it is determined that a violation has occurred, the Bureau is unable to obtain a positive outcome for either the Bureau or the student. Also, the current penalty structure does not provide a sufficient deterrent to future misconduct by industry participants. Because of these deficiencies, rather than following through with conventional progressive disciplinary actions (e.g., warning, citation, probation, suspension, revocation), Bureau staff instead attempt to "leverage" the Bureau's approval authority to address student complaints and violations that have occurred. These internal referrals are not subject to any specific standards or requirements. The somewhat arbitrary manner in which staff make such referrals, and with which other staff accept and act upon the referrals made, contributes to industry perceptions that the Bureau's enforcement activities are sometimes inconsistently applied, and frequently based on personal relationships, political influence, or other factors. Also, this "leveraging" of the Bureau's approval authority to obtain concessions in connection with specific disputes contributes to industry perceptions that the Bureau is operating a "legalized extortion racket."

The Reform Act encourages referrals of cases from the Bureau's enforcement staff to its licensing staff by failing to provide the Bureau with enforcement and restitution measures that are applicable to the types of isolated violations that commonly occur. The Reform Act instead authorizes the Bureau to refuse to issue or renew an institution's approval to operate for a violation of the Reform Act, or any associated standard, rule, or regulation.[103]

Sections 94901(h) and 94915(j) provide the Bureau with the authority to place degree and non-degree institutions on probation for up to 24 months after making a determination that the institution has deviated from the standards for approval, and giving the institution due notice and an opportunity to be heard. However, the Bureau has never placed an institution on probation, instead opting to address violations through the reapproval process and, in some cases, issuing a conditional approval to operate. If a conditional approval to operate is issued, the institution, rather than the state, bears the burden of proof in any associated administrative hearing procedure.

The link from enforcement back to the Bureau's approval processes is not appropriate in many circumstances and can contribute to a variety of inconsistent practices. As an extreme example, but which occurs with some frequency, if an institution has a pending reapproval application, and the Bureau concurrently determines that the institution is violating the law on a systemic basis, the Bureau can decide whether to place the institution on probation, or suspend or revoke the institution's approval to operate, or, alternatively, whether to deny the institution's reapproval application, or issue a conditional reapproval to operate. The availability of alternative processes for the same circumstances necessarily invites inconsistency in the application of the law, and charges of favoritism based on personal relationships, political influence, convenience of the Bureau, or other factors.

Recommendation A-1: Overhaul the Reform Act.

The Reform Act should be overhauled. The new statutes should provide a consolidated structure that is applicable to institutions offering non-degree and degree programs, or both. The statutes should provide for a several year candidacy period for new institutions subsequent to issuance of a temporary approval to operate, if applicable, and prior to issuance of a full approval to operate. The statutes should provide for issuance of formal warning notices and the imposition of meaningful sanctions and penalties that take into consideration the amount of tuition paid by students, where applicable. The statutes should clearly delineate the boundaries between enforcement/disciplinary processes and licensing/approval processes so that violations are addressed in a more consistent and uniform manner.

[103] Section 94830

B. Accredited Institution Exemptions

Currently, nearly 20 percent of approved non-degree-granting institutions are accredited by a national accrediting agency. As shown by **Table 33**, below, most Bureau-approved, accredited non-degree-granting institutions are accredited by one of five national accrediting agencies. Three accrediting agencies (NACCAS, ACCSCT, and ACCET) account for more than 75 percent of all non-degree-granting institution accreditations.

Table 33
Bureau-Approved Non-Degree-Granting Institution National Accreditations

National Accrediting Agency	*Number of Bureau-Approved Institutions*
National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS)	75
Accrediting Commission of Career Schools and Colleges of Technology (ACCSCT)	61
Accrediting Council for Continuing Education and Training (ACCET)	43
Accrediting Bureau of Health Education Schools (ABHES)	14
Committee on Accreditation (CAC)	12
16 Other National Accrediting Agencies	29
Total Nationally Accredited Non-Degree-Granting Institutions	234

Includes 14 institutions that have dual accreditations (e.g., ACCSCT and ABHES).

Source: SAIL System Reports.

More than 40 percent of approved degree-granting institutions are accredited by either non-WASC regional or national accrediting agencies, or both. There are 24 Bureau-approved degree-granting institutions that are accredited by non-WASC regional accrediting agencies (or 33 institutions, if institutions that hold separate approvals for different campuses are counted separately). A number of these regionally accredited institutions have been in operation in other states for several generations, or longer, and are well-regarded within their local and regional communities as quality higher education institutions. Many are public universities, or not-for-profit enterprises. As shown by **Table 34**, on the following page, a majority of approved, non-WASC, regionally accredited degree-granting institutions are accredited by the North Central Association of Colleges and Schools (NCA).

Table 34
Bureau-Approved Regionally Accredited Degree-Granting Institutions

Institution	*Regional Accrediting Agency*
Carnegie Mellon University	Middle States
Lesley University	Middle States
University of Pennsylvania Wharton School of Business	Middle States
Antioch University	Northwest
Argosy University (2)	North Central
Brown Mackie College (4)	North Central
Central Michigan University	North Central
Columbia College – Missouri	North Central
Devry University	North Central
Northwood University	North Central
Park University (3)	North Central
Southern Illinois University at Carbondale	North Central
Trinity Christian College	North Central
Trinity International University	North Central
Union Institute & University	North Central
University of Phoenix	North Central
Walden University	North Central
Webster University (2)	North Central
Cambridge College, Inc.	New England
Springfield College	New England
University of New Haven (3)	New England
American Intercontinental University	Southern
Central Texas College	Southern
Church of God Theological Seminary	Southern

Note 1: Figures in italics denotes number of related institutions in cases where a single business entity has separate approvals for different campus locations.

Source: SAIL System Reports.

There are 70 Bureau-approved degree-granting institutions that are accredited by national accrediting agencies (or 100 institutions, if institutions holding separate approvals for different campuses are counted separately). As shown by **Table 35**, on the following page, most approved, nationally accredited, degree-granting institutions are accredited by either the Accrediting Commission of Career School and Colleges of Technology (ACCSCT) or the Accrediting Council for Independent Schools and Colleges (ACISC), or both.

Table 35
Bureau-Approved Nationally Accredited Degree-Granting Institutions

National Accrediting Agency	*Number of Bureau-Approved Institutions*
Accrediting Commission of Career Schools and Colleges of Technology (ACCSCT)	45
Accrediting Council for Independent Schools and Colleges (ACICS)	26
Accrediting Bureau of Health Education Schools (ABHES)	8
17 Other National Accrediting Agencies	28
Total Nationally Accredited Degree-Granting Institutions	107

Includes 7 institutions that have dual accreditations (e.g., ACCSCT and ACICS).

Source: SAIL System Reports

For many years, industry representatives, state officials, and other interested persons have debated the pros and cons of exempting accredited institutions from some, or all, of the Reform Act's provisions. WASC-accredited institutions are currently fully exempted from the Reform Act. Because the exemption is complete, these institutions are not even required to provide periodic reporting to the Bureau regarding their enrollment, completion rates, complaint records, or other information that could be useful for public policy decision-making purposes. Also, there are no formal mechanisms in place for the Bureau to participate with WASC in completing site reviews of these institutions, even in a limited observational role. Most recently, SB 967 partially exempted non-WASC regionally accredited institutions from the Bureau's approval processes. However, the manner in which the exemption was structured appears to have created a number of new problems for both the Bureau and for some non-WASC regionally accredited institutions.

One of the principal arguments made for not exempting accredited institutions from the Reform Act is that the Bureau's roles and responsibilities are complementary to those of the accrediting agencies and, if applicable, the U.S. Department of Education. Proponents of exempting accredited institutions argue, on the other hand, that many accredited institutions are subject to comparatively more rigorous oversight processes by both the U.S. Department of Education and federally-approved accrediting agencies, and that the Bureau's efforts should instead focus on institutions that are not being monitored by any other regulatory agency except the Bureau, or that are only being monitored to a limited extent by other California State Government agencies (e.g., barbering and cosmetology schools).

The data provided in Tables 34 and 35 show that this debate can be narrowed down to a question as to whether or not the accreditation processes utilized by any of 10 or so regional or national accrediting agencies, that collectively accredit 20 to 25 percent of all Bureau-approved institutions, provide a sufficient level of protection of the state's interests in assuring that the institution's students are adequately protected and treated fairly, and receive quality education or training services. None of the reports previously prepared concerning this issue have definitively addressed this question, and several such reports have been prepared.[104] [105] [106]

A potential approach to resolving this issue would be to conduct a pilot project under which selected accredited institutions would be administratively exempted from most (but not all) provisions of the Reform Act, provided that a Memorandum of Understanding (MOU) was first established between the selected accrediting agency(ies), the Bureau, and the affected institutions, that would ensure that the state's interests were being adequately protected (e.g., agreement that the institution will continue to provide required standard disclosures, that Bureau staff or other state officials can participate as observers on the accrediting agency's site reviews, that the Bureau or other designated state agencies will be provided copies of communications and reports concerning institutional performance and student complaints, etc.). As part of the pilot project, any administratively exempted institution that engaged in specified types of misconduct could potentially have its exemption withdrawn or cancelled, and thereby again become subject to all applicable standards and requirements. Additionally, if an accrediting agency failed to fulfill its obligations, the state would retain the right to cancel the agency's MOU, thereby withdrawing the exemptions issued for all of the subject institutions.

The pilot project could be effective for a period of five (5) years, including calendar time for development of the MOU(s) and for review and evaluation of the results of the pilot. The pilot project would sunset after this time, unless extended. The pilot project could be initially limited to just a few accrediting agencies (e.g., two or three non-WASC regional accrediting agencies) and a relatively small number of institutions, and then expanded to include other accrediting agencies and institutions over time, assuming that the initial pilot project was successful.

With this approach, the Bureau could potentially leverage its exemption approval authority to obtain commitments from accrediting agencies and accredited institutions as needed to adequately protect the state's interests. Additionally, the risk of losing an

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[104] *The Effectiveness of California's Oversight of Private Postsecondary Education*, California Postsecondary Education Commission, 1995

[105] *State Licensure Versus Accreditation of Proprietary Schools and Colleges*, California Postsecondary Education Commission, March 2004

[106] *For-Profit Postsecondary Educational Institutions: Overview of Accreditation and State and Federal Oversight*, California Research Bureau, July 2004

exemption, by engaging in misconduct, could be an effective deterrent to such misconduct. Also, by regularly participating in accrediting agency site reviews, Bureau staff would become more knowledgeable about accrediting agency site review practices and procedures, and could transfer this information back to the Bureau for purposes of improving the Bureau's oversight of non-exempted institutions. The State of Florida's "Licensure by Means of Accreditation Program" could potentially serve as a model for this pilot project.

Recommendation B-1: Develop an Accredited Institution Exemption Pilot Project.

It is possible that the State could realize significant benefits by partnering with selected accrediting agencies in overseeing accredited institutions, and that a pilot project could facilitate the transition to this alternative business model. The pilot project should be effective for a period of five (5) years, including calendar time for development of Memoranda of Understanding (MOU) with selected accrediting agencies and accredited institutions, and for review and evaluation of the results of the pilot. The pilot project should be initially limited to just a few accrediting agencies (e.g., two or three non-WASC regional accrediting agencies) and a relatively small number of institutions, and then expanded to include other accrediting agencies and institutions over time, assuming that the initial pilot project was successful.

The partial exemption provided by SB 967 for non-WASC regionally accredited institutions appears to be incomplete and in need of restructuring. SB 967 exempted these institutions from the Bureau's general application review and approval processes, as set forth in Sections 94900 and 94915 for degree and non-degree granting institutions, respectively. Instead, these institutions are required to comply with only a limited set of requirements as set forth in Section 94905(b). However, Section 94802(c) which is incorporated into Section 94905 by reference,[107] continues to require that the Bureau act upon these institutions' applications but, because of the exemptions from Sections 94900 and 94915, the Bureau is essentially required to do so without first determining or requiring compliance with any standards, except those limited requirements specifically enumerated in Section 94905(b).

The DCA recently completed a review of this issue whereby the Bureau would issue an approval (license) to operate, or deny an institution's application, without first determining or requiring the institution's compliance with the Reform Act's standards. It is the Department's position that SB 967 established a new private postsecondary education entity in California, a "non-WASC regionally accredited institution"[108] that is separate and distinct from an "institution" as defined in Section 94739, and which exempted these institutions from all of the provisions of the Reform Act, except for the requirements of

[107] Section 94905(b)(5)

[108] Section 94740.5

Article 13 regarding administrative and judicial procedures, Section 94945 regarding the payment of STRF assessments, and the limited requirements of Section 94905(b), which incorporates Section 94804(a)(2) regarding financial responsibility requirements and Section 94832 regarding payment of fees. The Department also determined that non-WASC regionally accredited institutions are only subject to discipline by the Bureau if the institution loses its accreditation or federal financial aid eligibility as provided by Section 94905(d). It is the Department's position that none of the consumer protection provisions or other standards and requirements contained in Article 6 and elsewhere in the Reform Act are applicable to these institutions, including requirements related to (1) providing prospective students with a *School Performance Fact Sheet* and transferability of credits disclosure,[109] (2) incorporation of Bureau contact information in all student enrollment agreements,[110] and (3) providing the Bureau with an annual report and copies of all accrediting agency reports and audit reports prepared by the U.S. Department of Education and student loan guarantee agencies.[111]

The Department also determined that the Bureau is still required by Section 94905(c) to receive and investigate complaints from students and others concerning non-WASC regionally accredited institutions. However, it is unclear how these complaints will be investigated or what action the Bureau can take against these institutions, given the Department's position that the institutions are exempt from nearly all of the provisions of the Reform Act and are only subject to discipline as provided for by Section 94905(d). In these circumstances, if the Bureau determines that the complaints are not within its jurisdiction, or it is unable to dispose of the complaints satisfactorily, it could potentially refer the complaints to the appropriate out-of-state accrediting agency using the authority provided in Section 129 of the Business and Professions Code.

Recommendation B-2: Restructure the Partial Exemption from the Bureau's Approval Processes Provided for Non-WASC Regionally Accredited Institutions

The Bureau should not be the position of having to issue an approval to operate to an institution where the institution is exempt from nearly all of the Reform Act's standards and the Bureau does not have a mechanism to ensure the institution's compliance with minimum standards that are otherwise applicable to Bureau-approved institutions. Also, the Bureau should not be in the position of having to receive and investigate complaints regarding institutions in cases where there is no basis for determining whether the institution is operating in compliance with the law because there are no applicable standards available upon which to make such determinations.

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[109] Section 94816

[110] Section 94810

[111] Sections 94808 and 94809

C. New Institution Application Reviews and Approvals

A significant amount of Bureau staff time is currently spent thoroughly reviewing the applications and supporting documentation submitted by institutions proposing to establish new institutions, preparing letters to these applicants documenting deficiencies with their applications, and reviewing the revised or supplemental documentation submitted in response to the deficiency notices. The documentation submitted by the applicants provides the basis for issuance of a temporary approval to operate, and establishes baseline expectations concerning the institution's governance, facilities, equipment, admissions standards, programs, faculty, administration, etc. The documentation can also potentially be used for purposes of denying an approval to operate in the event that the institution does not fulfill these expectations.

The Bureau does not provide technical assistance workshops for new applicants. Such workshops could be beneficial in terms of improving the quality and completeness of the applications that are submitted. The Bureau is currently planning to conduct workshops as part of the CAPPS November 2005 Annual Conference.

In some cases, it appears that Bureau staff may over-emphasize needs for applicants to fulfill all of the Bureau's documentation requirements, especially considering that:

- Prior to issuing a full approval to operate, a site visit to the institution will be completed to determine what is actually occurring at the institution (versus what is proposed in the institution's application documents)
- Nearly all new institutions are eventually issued a full approval to operate, irrespective of the extent to which the applicants are required to fulfill the initial application documentation requirements.

In the case of new non-degree institutions, the emphasis placed on obtaining complete documentation is better understood if consideration is given to the relatively limited level of resources spent on completing site reviews of these institutions. In the case of non-degree institutions, site review teams are not utilized, Bureau staff usually spend less than a full day completing the reviews, and a full year of time, or longer, may elapse before the initial site review is completed. If more substantive, timely initial site reviews were regularly completed of these new institutions, Bureau staff might feel less compelled to require that applicants fully document all of the various components of their application.

In the case of degree-granting institutions, less emphasis is generally placed on fulfillment of all documentation requirements due, in part, to staff expectations that they will complete in-depth site reviews using multi-disciplinary visiting teams. However, initial site reviews of new degree-granting institutions have not been consistently completed on a timely basis.

Notwithstanding all of the emphasis placed on obtaining complete documentation from new institution applicants, it is clear that this emphasis is limited to the non-financial

components of an institution's application. Little emphasis is placed on obtaining complete financial documentation, or reviewing the financial documents that are submitted. Some other states have adopted a more complete set of financial standards to be used for purposes of assessing an institution's financial capabilities, and use in-house or outside financial analysts or accountants to complete these assessments. Also, some other states require that new institutions provide insurance or submit a surety bond. In addition to providing financial protection for the institution's students, these latter requirements help to ensure that the institution has sufficient financial resources to deliver the proposed educational services because the insurance or bonds will have to be underwritten, thereby subjecting the institution to a third party review of its financial status and plans. Issuance of the insurance or bonds will usually be subject to the institution's acceptance of certain financial covenants and/or pledges of collateral that help to reduce closure associated risks.

For new non-degree institutions, the amount of application fees collected appears to be less than the actual costs associated with completing most reviews. A $900 fee (+/- $50) does not appear to be sufficient to thoroughly review the institution's application, document associated deficiencies, complete a substantive site review, and make a determination as to whether to issue a full approval to operate, deny the application, or issue a conditional approval. If an institution is subject to Article 7 (*Maxine Waters Act*), significant additional fees are imposed. But, for non-degree institutions that are not subject to Article 7, an increase in the application fees charged would appear to be justified.

The following ten (10) recommendations are intended to overhaul the new institution application submission and review processes:

Recommendation C-1: Streamline and simplify current statutory, regulatory, and administrative requirements related to submission of new institution applications while concurrently strengthening and improving the frequency, timeliness, depth, breadth, and quality of the Bureau's site review processes.

Recommendation C-2: Require employer letters only where necessary and appropriate.

Recommendation C-3: Hold workshops periodically in the state's major metropolitan areas to provide industry representatives with application preparation training and assistance.

Recommendation C-4: Adopt a meaningful set of minimum financial standards.

Recommendation C-5: Establish a pool of outside financial or accounting experts to perform reviews of financial information.

Recommendation C-6: Require that applicants provide insurance or bonds that clearly demonstrate a financial commitment to the proposed new business venture.

Recommendation C-7: Use site review teams to supplement Bureau staff capabilities in most (or all) cases.

Recommendation C-8: Complete initial site reviews within 4 to 6 months of commencement of operations, with additional, follow-up visits completed as needed to verify that identified deficiencies are being addressed.

Recommendation C-9: Verify all Article 7 exemptions as part of the initial or follow-up site review, as appropriate.

Recommendation C-10: Increase new non-degree institution application fees to a level sufficient to fully fund the costs associated with performing new institution application reviews, site visits, and other related activities.

D. Additions and Changes

In addition to reviewing and approving new institution applications, a primary focus of Non-Degree and Degree Program staff is the review and approval of additions and changes to an approved institution's ownership, programs, or campus locations. Currently, there are about 130 pending add/change applications for non-degree-granting institutions. About 50 of these were received more than a full year ago, including nearly 30 applications to add new non-degree programs. There also are about 30 pending add/change applications for degree granting institutions. Most of these applications were received within the past year, although there are a few that were received several years ago. Staff within both the Non-Degree and Degree Units are currently attempting to expedite the processing of these applications, focusing on those cases where there aren't any known substantive issues or concerns involving complaints, compliance, or fee payments. However, the recent redirection of staff from these units to the Enforcement and Title 38 Programs may adversely impact the processing of these applications as well as the processing of new institution applications and reapprovals.

Three (3) of 11 Education Specialist positions from the Non-Degree Unit, and one (1) of three (3) Senior Education Specialist positions from the Degree Unit, are in the process of being re-directed to staff a new Enforcement Unit or to supplement the Title 38 Program. To date, Non-Degree and Degree Unit staffing levels have not been sufficient to perform all required application review and approval functions, but staff in both programs were making progress in reducing legacy backlogs that were inherited from the Council or accumulated during the Bureau's first year of operations. The redirections to the Title 38 Program (1 Education Specialist from the Non-Degree Unit and 1 Senior Education Specialist from the Degree Unit) are necessary due to the Bureau's fiscal circumstances. However, the redirection of five (5) positions from these two business units is likely to stall, or reverse, the progress that has been made in reducing application backlogs, and also extend the timeframes needed to obtain approval of applications to add new programs or courses, add or change campus locations, change of ownership, etc. The processing of new institution applications and reapprovals also is likely to be adversely impacted by these same redirections of Education Specialist series positions.

Recommendation D-1: Restore all redirected Non-Degree and Degree Unit Education Specialist series positions through the FY2006/07 BCP process.

Current statutes require Bureau approval of applications to add new branch or satellite locations, but the Bureau's fee schedule, set forth in regulation, does not include a fee for new branch/satellite locations. The Bureau currently charges such fees to non-degree-granting institutions, but not to degree-granting institutions. In most cases, only a limited review of these applications is needed because the Bureau has already approved the

institution as well as the program or course of instruction that will be offered at the new branch or satellite location.

Recommendation D-2: Establish a fee for branch and satellite campus additions.

E. Regular and Unannounced Inspections

The Bureau has not implemented current statutory requirements related to completion of regular and unannounced inspections of approved institutions. Such inspections should be considered a mission-critical component of the state's overall regulatory program, and should not be ignored. The Bureau's staffing resources should be augmented to enable completion of several hundred additional one- to two-day site inspections per year.

If most (or all) institutions are inspected at least once every four (4) to five (5) years, it will help to simplify and speed up the Bureau's reapproval processes. Conversely, if such inspections are not completed, then it becomes much more critical that a site review be performed as part of the institution's reapproval, which adds complexity to and slows down the reapproval process. Site reviews are not currently completed as part of the reapproval process, in most cases.

Regular and unannounced inspections should emphasize newer institutions, higher-risk industries (e.g., trucking, cosmetology, and message therapy) where there have been a greater number of closures or complaints, and selected other institutions where there is a history of compliance or performance problems.

The following four (4) recommendations address the Bureau's needs to develop and maintain a regular and unannounced inspection program.

Recommendation E-1: Develop and implement a regular and unannounced inspection program as currently required by the Reform Act.

Recommendation E-2: Authorize additional staffing resources to enable the Bureau to perform several hundred additional 1- to 2-day site visits each year.

Recommendation E-3: Require the Bureau to include in its annual reports information regarding the number of regular and unannounced inspections completed, and the amount of time spent on-site performing these inspections.

Recommendation E-4: Increase annual fees as needed to fund the additional costs associated with performing these regular and unannounced inspections.

F. Reapprovals

Primarily because of significant past and current gaps and deficiencies with the Bureau's new institution approval and ongoing compliance monitoring and enforcement processes, and application backlogs and associated delays in the processing of non-degree institution reapprovals, more calendar and staff time is needed to process reapproval applications than would otherwise be required. Among the gaps and deficiencies that adversely impact the Bureau's current reapproval processes are included:

- Past failures to complete an adequate assessment of an institution prior to issuance of its initial approval. In some cases, the Bureau has issued full approvals to operate to institutions that should have received conditional approvals, or had their application denied.
- Past and ongoing failure to implement a regular inspection program encompassing all approved institutions. In most cases, Bureau staff have not completed a site visit to these institutions for more than 5 years.
- Past and ongoing failure to regularly monitor annual fee payments, STRF remittances, and annual report submissions. Large numbers of institutions have open (unpaid) annual fee invoices or are chronically delinquent in submitting their annual reports, or both. STRF remittances have generally been reviewed at only a superficial level, or not at all.
- Past and ongoing failure to validate enrollment, performance, and other data provided by approved institutions. Enrollment data, completion and placement rate data, and financial data, generally have not been closely reviewed or verified.
- Past and ongoing failure to initiate corrective action when problems or violations of the Reform Act are detected, including pursuit of enforcement or disciplinary actions, when appropriate to do so. Unresolved problems accumulate over a period of months, or years, until the institution submits its reapproval application and decisions have to be made regarding (1) whether to issue a conditional or full approval to operate, or to deny the application, and (2) the term of the reapproval, if one is issued.

Additionally, the Bureau's non-degree reapproval application requires that institutions provide substantially more information than is required by Section 94840. Section 94840 only requires that institutions submit a description or documentation of changes made since the institution's last application was submitted.

In the absence of the above gaps and deficiencies, and large backlogs of pending reapproval applications, most approved institutions would possibly need to only submit an abbreviated standard form reapproval application and accompanying fee to obtain a renewal. In most cases, only a limited review of the reapproval application would be needed. Bureau staff would only need to conduct a limited scope site review of the institution's records to verify the programmatic and performance information previously submitted to, and accepted by, the Bureau, and to confirm continued compliance with core standards and requirements. In cases where an on-site inspection of the institution had been recently completed, the site review could be avoided completely.

Conversely, if there are multiple gaps and deficiencies in the Bureau's new institution approval and ongoing compliance monitoring and enforcement processes, such as those

described above, then submission and thorough review of more fully documented reapproval applications, and conduct of in-depth site reviews of most (or all) institutions, is essential for purposes of maintaining the integrity of the program.

Currently, all of the above described new institution approval and ongoing compliance monitoring and enforcement gaps and deficiencies exist, but the Bureau usually does not (1) complete site visits to these institutions, or (2) complete an in-depth review in those cases where a site visit is completed. Additionally, there are significant gaps and deficiencies in the breadth and depth of the document and data reviews that are completed.

Assuming that the Bureau addresses the above described gaps and deficiencies, and concurrently implements a simplified, fully streamlined reapproval process for all institutions, then the reapproval application fees charged to degree granting institutions (e.g., $4,050 +/- $225) could be reduced. Conversely, if the operational gaps and deficiencies are not addressed, and the Bureau instead requires submission of more fully documented reapproval applications, thoroughly reviews all of these documents, and completes in-depth site visits in most, or all, cases, then the reapproval application fees charged to non-degree institutions (e.g., $900, +/- $50) would need to be increased substantially to fully fund these additional costs.

The following three (3) recommendations are structured to improve the Bureau's reapproval application submission and assessment processes. These recommendations assume that the Bureau completes adequate assessments of new institution applications, implements a regular inspection program encompassing all approved institutions, regularly monitors annual fee payments, STRF remittances, and annual report submissions, periodically validates enrollment, performance, and other data provided by approved institutions, and takes corrective action on a timely basis when problems or violations of the Reform Act are detected.

Recommendation F-1: Develop an abbreviated reapproval application form that enables nearly automatic processing of reapproval applications, subject to completion of limited scope site visits, where necessary.

Recommendation F-2: Revise the statutes to clearly require completion of site visits in all cases where none have been performed since issuance of an institution's last approval to operate, while concurrently providing the Bureau discretion with respect to completion of site visits in other circumstances.

Recommendation F-3: Reduce reapproval application fees for degree-granting institutions and increase reapproval application fees for non-degree institutions.

G. Religious Exemption Program

Religious institutions are required to renew their exemption annually. Fees for both original and renewal applications are relatively low (slightly less than $100, in all cases), but vary slightly according to an institution's gross revenues.

The religious exemption process could be streamlined and simplified by extending the term of the exemptions (e.g., to at least two to three years). This also would reduce the Bureau's workload for this program. In lieu of the annual renewal fees currently assessed, a uniform fee should be established for all of these applications for the full term of the exemption (e.g., $180 for a two-year exemption, or $270 for a three-year exemption).

> **Recommendation G-1: Modify the statutes to enable the Bureau to extend the term of religious program exemptions to two (2) to three (3) years, and re-set and standardize application and renewal fees consistent with this structure. Concurrently, establish a process for amending an approved exemption to add new programs during this period, and for assessing a fee for the costs of processing these amendments.**

Current statutes specifically delineate the types of information that the Bureau can request from an institution, and strictly prohibit the Bureau from becoming involved in the institution's programs. This sometimes creates a conflict when the Bureau needs additional information regarding an educational offering in order to determine the program's eligibility for an exemption (e.g., a program catalog or outline). As a result, the Bureau is not always able to consistently implement the statutes.

> **Recommendation G-2: Revise the statutes to more clearly delineate circumstances in which the Bureau has authority to request catalogs, course outlines, or other documentation that may be needed for purposes of determining whether a religious institution's programs are eligible for exemption.**

H. Registration Program

The Registration Program appears to have evolved in a manner that is unnecessarily complex and difficult to administer. The 30-page length of the program's current application form seems inconsistent with what should be needed for a "registration" program, and suggests that significant opportunities exist to streamline and simplify the application and associated review processes, especially in cases where the applicant is already an approved institution. As necessary, changes to the statutes governing the program should be made that will enable the Bureau to streamline and simplify its application form as much as possible. For example, currently approved institutions should not have to list all locations in California at which the institution operates, as currently required by Section 94931(d)(4), or provide a copy of the institution's refund policy, as is currently required by Section 94931(d)(5)(E).

Additionally, significant gaps, deficiencies, and complexities in the statutes governing the Registration Program need to be addressed. The statutory definition for the Short-Term Seminar category should be restored so that these programs are again be eligible for registration. Uniform requirements should be established for all categories of registration programs, versus having different requirements for specific categories as is currently the case for Short-Term Career programs. Registrations should not automatically remain active into perpetuity, as is currently the case. Section 94931(h) should be revised to clearly require renewals on a periodic basis (e.g., every four to five years). The requirements and processes for renewals should be as limited as possible, particularly in cases where there have not been any substantive changes involving the program since its previous registration was accepted. A process needs to be established for amending registrations in cases where significant changes are made to the program subsequent its registration. Finally, fees need to be lawfully established for initial registrations, amendments, and renewals, and a limited annual or bi-annual fee should be established that is sufficient to fund ongoing program compliance monitoring, enforcement, and administrative costs.

> **Recommendation H-1: Overhaul the statutes governing the Registration Program to (1) restore the Short-Term Seminar Training category, (2) enable streamlining and simplification of program applications, (3) establish uniform standards and requirements for all program categories, (4) require periodic renewal of registrations, (5) enable registrations to be amended, (6) establish fees for initial registrations, amendments, renewals, and annual or bi-annual fees to fund ongoing program compliance monitoring, enforcement, and administrative costs.**

It is difficult to understand why the Bureau continues to be required to regulate institutions that exclusively offer programs having a total cost of between $500 and $1,000 when it has been experiencing significant problems over an extended period of time regulating institutions offering programs that present much higher risks of significant

financial harm to consumers. It is not clear that there are many significant problems occurring with these type of institutions (e.g., institutions that exclusively offer low-cost real estate agent and contractor license exam preparation courses).

> **Recommendation H-2: Consider exempting institutions that exclusively offer programs costing up to $1,000, versus the current $500 limitation, subject to requirements that the programs are terminal and that no loan or other financing programs will be provided.**

On September 16, 2005, the Bureau issued a notice to all approved institutions regarding the availability of an exemption for institutions that exclusively offer programs costing $500 or less. This exemption has been in effect since January 1, 2005. The notice indicates that institutions which are eligible for the exemption may relinquish their approval to operate or registration and recover application fees paid subsequent to January 1st. The Bureau had not previously publicized the availability of the exemption. Similarly, the Bureau has not regularly publicized the availability of the registration program. Instead, some Bureau staff have sometimes discouraged institutions from converting to a registration status in cases where they have been eligible to do so. Because the Bureau has not regularly publicized the availability of the registration program and, subsequently, the exemption for programs costing up to $500, some institutions have maintained a full approval status for their programs and have paid higher fees to the Bureau than would otherwise have been required.

> **Recommendation H-3: Publicize the availability of registration for qualifying programs along with the availability of an exemption for programs costing $500 or less, and encourage qualifying institutions to register their programs or obtain an exemption in cases where they are eligible to do so.**

I. Certificates of Authorization

All instructors at non-degree-granting institutions are required to obtain a COA from the Bureau. Each year, the Bureau "certifies" about 5,000 persons as instructors at non-degree-granting institutions. To obtain a COA, applicants may not have any record of any violation of the Reform Act. The only other requirement that these applicants need to satisfy is that they must have at least three (3) years experience and training or education in the occupation or job category for which the certification is sought. There is no renewal process for COAs. Instead, new applications must be submitted every three (3) years. Obviously, this process is inherently redundant since previously certified instructors would always subsequently have at least three (3) years experience. The Bureau collects several hundred thousand dollars per year for processing these applications, many of which are for the same persons.

Section 94915(a)(3) delineates several additional standards and requirements for instructors at non-degree institutions that are supplemental to what is required to obtain a COA. For example, instructors must possess adequate academic, experiential, and professional qualifications to teach of the assigned course, and may not have been convicted of, or have pled nolo contendere or guilty to, specified types of crimes, including violation of the Reform Act, which was already addressed as a requirement to obtain a COA. The institutions are responsible for ensuring that instructors meet these requirements, not the Bureau.

A similar process is not required for instructors at degree-granting institutions. Instead, the institutions are required to have fully qualified faculty that meet various standards and requirements set forth in Section 94900(a)(2) of the Reform Act. With this structure, the Bureau is potentially able to focus its efforts on establishing requirements and standards through statutes and regulations, and then monitoring each institution's compliance with these requirements and standards, and initiating corrective actions, including enforcement or disciplinary actions, where appropriate.

It is not clear why responsibility for having fully qualified faculty at non-degree-granting institutions is split between the Bureau and the institution. For non-degree-granting institutions, the Bureau's issuance of a COA is sometimes viewed as sufficient, in itself, to qualify a person to serve as an instructor for a program. Subsequently, when students complain about faculty at non-degree institutions, the institutions frequently use the Bureau's COA to demonstrate that its instructors are state-approved and therefore qualified to provide the instruction. Having three (3) years experience, training, or education in an occupation or job category is not necessarily sufficient to qualify a person as an instructor but, since the instructor has already been "certified" by the Bureau, it is difficult for the Bureau to subsequently challenge the credentials of the person. In summary, the Bureau's certification ends up serving as a teaching credential, which it is not.

The "redundancy" problem discussed above with respect to Instructors also is relevant to Directors and Associate Directors. Additionally, the criteria for eligibility for these latter two (2) COA categories is overly rigid. Under the current statutes, the Bureau does not have any flexibility to substitute alternative education, training, or work experience for the types of qualifying experience set forth in the Reform Act. For example, a senior executive at Goodwill Industries who does not have two (2) years experience in an administrative position in a public or approved private postsecondary school can not serve as an Associate Director of a proposed new institution sponsored by Goodwill Industries to provide vocational training services to disadvantaged persons. However, if this same person was the sole owner of the proposed new institution, they could receive a COA to serve as the institution's Director. These same types of problems also exist to some extent for the Financial Aid Director and Financial Aid Officer categories.

Finally, the amount of COA application fees collected by the Bureau substantially exceeds its costs to process these applications. These fees cross-subsidize other components of the Non-Degree Program for which adequate fees are not assessed (e.g., new institution application and reapproval fees). A significant reduction to the COA fees is needed.

The following five (5) recommendations are intended to overhaul the COA Program.

Recommendation I-1: Discontinue the COA Program in its entirety for Instructors. Minimum requirements and standards for Instructors should be set forth in statute or regulations, and non-degree-granting institutions should be required to comply with these requirements and standards. The Bureau should monitor institutions for compliance with the requirements and standards, and initiate corrective action, including enforcement and disciplinary actions, where warranted.

Recommendation I-2: Modify the provisions governing Director, Associate Director, Financial Aid Director, and Financial Aid Officer to provide the Bureau authority to accept alternate equivalent experience.

Recommendation I-3: Establish a process to permit renewal of the COAs so as enable to the Bureau to verify compliance with any applicable continuing education requirements.

Recommendation I-4: Restructure COA application fees to differentiate between initial and renewal applications, and established at a level consistent with the cost of processing these types of transactions.

Recommendation I-5: Require submission of fingerprints by new COA applicants (Director, Associate Director, Financial Aid Director, and Financial Aid Officer) so that the Bureau can verify the criminal history records of these applicants.

J. Agent Permits

The Bureau does not appear to currently have statutory authority to require applicants for agent permits to furnish fingerprints. Fingerprints are needed by the Bureau to enable it to verify that the applicant has not been convicted of a crime substantially related to the qualifications, functions, or duties of an agent.

> **Recommendation J-1: Amend the Reform Act to clearly authorize the Bureau to require submission of fingerprints from persons submitting agent permit applications.**

The additional fees charged by the Bureau to new applicants for an agent permit appear to significantly exceed the costs charged by the Department of Justice to the Bureau to furnish summary criminal history information regarding the applicant. The fee structured should be realigned to be more consistent with actual costs incurred.

> **Recommendation J-2: Adjust the Bureau's agent permit fee schedule to align the fees with the Bureau's actual costs related to obtaining summary criminal history information from the DOJ.**

K. Unapproved Institution Enforcement

There are several major deficiencies with the Bureau's current unapproved institution enforcement program. First, Bureau staff do not have access to research tools commonly available to state investigators that that could be helpful in identifying and locating the owners of these businesses. Second, in cases where schools are found to be offering unapproved educational or vocational training programs, the Bureau has rarely cited the institution and assessed a fine. Finally, in the few cases where a citation has been issued with a fine, the amount of the fine has been limited to $2,500. Finally, the Bureau has never developed or implemented a proactive unapproved institution enforcement program.

1. Investigative Research Tools

Bureau staff need to be have access to reverse and unlisted telephone number directories, and to Department of Motor Vehicles, Employment Development Department, and Franchise Tax Board records, so that they can identify and locate the owners of unapproved institutions. The Bureau has begun to address some of these deficiencies.

Recommendation K-1: Provide selected Bureau staff with access to (1) reverse and unlisted telephone number directories, and (2) Department of Motor Vehicle, Employment Development Department, and Franchise Tax Board records.

2. Unapproved Institution Citation Documentation

The primary reason that Bureau staff have not issued citations more frequently in the past is that, in order to do so, they have been required to fully document the violation and the basis for their action. The level of documentation required has been characterized by Bureau staff as similar to what some other state regulatory agencies require when preparing an accusation against a licensee, which takes a significant amount of time to complete. Additionally, the calendar time delay associated with preparing the citations has often times precluded their effective utilization because the businesses close before the citation can be issued.

For the past several years, the Bureau has had only one (1) position assigned for purposes of investigating complaints involving unapproved institutions and programs, and has usually received 200 to 300 complaints of this type. Given these circumstances, staff could not realistically prepare many citations without adversely impacting the timeliness of other unapproved activity investigations. Also, Bureau staff have not usually attempted to concurrently fine an institution for multiple violations because doing so would require an even greater investment of resources in a single case. The Bureau has historically placed a higher priority on ensuring that unapproved institutions have closed, or are attempting to obtain an approval to operate, rather then citing and fining these businesses.

Recommendation K-2: Provide statutory authority for the Bureau to issue ticket-style citations.

Bureau staff are currently working with representatives of the Department of Consumer Affairs' Executive Office and the Legislature to streamline and simplify the citation preparation and issuance process so that it is more similar to the processes used by some other DCA boards and bureaus, including the Contractors State License Board and the Bureau of Automotive Repair, whereby simple, standard form citations can be immediately issued by staff that personally witness an unapproved institution either advertising to provide, or actually providing, educational or training services. Subsequently, a limited, summary-level report briefly describing the circumstances and evidence is required to be prepared for future reference purposes, if needed.

3. Unapproved Institution Fines

Under the Reform Act, the Bureau can issue a citation with a fine to an unapproved institution of up to $2,500 per violation. Alternatively, Section 148 of Chapter 1.5 of the Business and Professions Code potentially provides the Bureau with authority to establish, by regulation, a system for issuance of citations with fines of as much as $5,000 per inspection or investigation made with respect to the violation. The Bureau needs to be able to assess higher fines than currently permitted under either of these statutes when it determines that educational or vocational training services are being unlawfully provided without the Bureau's approval, particularly in cases where the programs are being provided by unapproved institutions.

Recommendation K-3: Increase the maximum amount of fines that can be assessed.

Section 94957(b) should be revised to enable assessment of larger fines on both a per violation and per inspection or investigation basis. Also, when determining the amount of a fine, the Bureau should be required to take into consideration the amount of tuition paid by students in addition to the other criteria currently specified in Section 94957(b). The risk of having to pay significant fines could help to deter future misconduct.

4. Proactive Unapproved Institution Enforcement Program

There are no specific statutory requirements for the Bureau to perform proactive enforcement activities to identify schools that are operating without an approval to operate. Also, given all of the Bureau's other workload, backlog, staffing, and budget issues, it is not necessarily surprising that this area has not been a priority for the Bureau. However, most industry participants believe that there are a significant number of smaller schools that are offering programs of instruction subject to Bureau approval and that, in many cases, consumers are being harmed by these businesses. Also, the volume of unlicensed activity complaints received suggests that there is a significant problem in this

area and, as shown from the outcomes of the Bureau's investigations, the Bureau often times does not become aware of the operation of these schools until they have already closed.

Several additional positions are needed by the Bureau to staff a Proactive Enforcement Unit. This unit would have responsibility for proactively identifying and taking enforcement action against schools that are operating without Bureau approval. Responsibilities of these staff would include reviewing advertisements, conducting undercover sting operations, and coordinating enforcement activities with local law enforcement and prosecutorial authorities. To minimize travel time and costs, most (or all) of these staff should probably be based in the Los Angeles metropolitan area. Funding for related investigative, prosecutorial, and administrative expenses also should be provided.

The Bureau is currently attempting to establish an unlicensed activity enforcement program through establishment of a specialized Enforcement Unit in Sacramento. Several positions have been identified for possible transfer to this unit which will be managed by an Education Administrator who was reassigned from the Non-Degree Program. A primary focus of the Enforcement Unit will be on investigating complaints or reports of unapproved activity at approved institutions and also investigating unapproved institutions. Currently, such investigations are only being performed on a reactive basis.

Recommendation K-4: Develop and implement an unlicensed activity proactive enforcement program.

Statutes should be enacted that require that the Bureau develop and implement a proactive enforcement program that targets unapproved schools. The Bureau should establish an Unapproved Schools Enforcement Unit, based in the Los Angeles area, and be provided with additional funding and staffing resources to be utilized solely for purposes of proactively identifying and taking enforcement action against unapproved institutions.

L. Approved Institution Complaints and Investigations

The Bureau has become overly-dependent on institutions to support its investigations of student complaints and provide documentation that would indicate whether or not violations have occurred. Most Bureau staff have little or no background or training in conducting formal investigations, or in documenting results of investigations in a manner that will support subsequent disciplinary action against an approved institution. Even in cases where a determination is made that violations have occurred, the Bureau lacks effective mechanisms for appropriately resolving a complaint, or for disciplining the institution that committed the violation. For example, the Bureau cannot order that refunds or other restitution be provided, issue formal written warnings, or impose fines that are meaningful relative to the amount of tuition paid by students.

Because of these circumstances, the Bureau sometimes attempts to "leverage" its approval authority to achieve concessions from an institution. The somewhat ad-hoc manner in which the Bureau subsequently uses its approval authority to address apparent, and actual, violations contributes to perceptions that institutions are treated differently depending on personal relationships, political influence, or other factors.

The number of positions currently allocated to performing reviews and investigations of approved institution complaints appears high relative to the number of complaints handled. During 2004/05, an average of only about 9 complaints per month was closed per position versus about 13 complaints per month received. During 2002/03 and 2003/04, the same number of staff closed 30 to 40 percent more complaints than were closed during 2004/05, and a much larger proportion of complaints was closed with a positive closure during those years.

It appears that the Bureau currently has sufficient staffing resources to keep pace with the flow of incoming complaints and prevent additional backlogs from accumulating, even without reducing requirements for staff to prepare full-text reports for all closed cases. If requirements for staff to prepare full-text reports are reduced, resources should be available to begin reducing the complaint backlogs that have accumulated.

The Bureau needs to develop a schedule for reducing the backlog of pending complaints. Bureau management should work with staff to develop and implement strategies to enable achievement of the scheduled backlog reductions. In addition to reducing requirements for staff to prepare full-text reports for all closed cases, the Bureau should attempt to identify and implement other strategies for reducing the amount of time staff spend on these cases (e.g., developing standard form case closing reports, developing standard templates and model paragraphs for use in preparing customized case closing reports, where needed, etc.).

The Bureau recently initiated a complaint intake/mediation pilot project. Bureau management believes its approach could reduce complaint handling documentation requirements and the backlog of pending complaints.

Recommendation L-1: Provide statutory authority for the Bureau to issue formal warning notices.

In some cases, the violations that are found are relatively minor or technical in nature, or represent an isolated instance or first offense at the institution. In these circumstances, the Bureau should have the ability to issue a formal warning notice that can serve to document the Bureau's findings and the institution's record, and which can be used to support subsequent enforcement or disciplinary actions if other violations occur.

Recommendation L-2: Clarify statutory authority for the Bureau to issue an order of abatement with a fine.

Currently, the Bureau believes that it can issue a citation with either a fine or an order of abatement, but not both. The Bureau should be able to order an approved institution to stop the misconduct in which they are engaged and concurrently fine the institution for the misconduct that has already occurred. The use of the term "or" in the current statutes may not preclude the Bureau from issuing a citation with both an order of abatement and a fine.

Recommendation L-3: Adopt regulations to enable the Bureau to impose larger fines for multiple student violations.

Under the Reform Act, the Bureau can issue a citation with a fine to an approved institution of up to $2,500 per violation. Alternatively, Section 125.9 of Chapter 1.5 of the Business and Professions Code potentially provides the Bureau with authority to establish, by regulation, a system for issuance of citations with fines of as much as $5,000 per inspection or investigation made with respect to the violation. The Bureau needs to be able to assess the higher fines currently authorized under the Business and Professions Code when it determines that an approved institution is offering programs or courses of instruction without the Bureau's approval.

Recommendation L-4: Restore the Bureau's Senior Investigator positions.

The predecessor Council had two (2) Senior Investigator positions that provided assistance in investigating complaints, but it appears that the positions were re-classified shortly following creation of the Bureau in 1998. These positions need to be restored to provide the Bureau with at least a minimum, core investigative capability.

Recommendation L-5: Revise the statutes to better delineate the Bureau's licensing and enforcement responsibilities and to place greater emphasis on disciplining institutions that deviate from the Reform Act's standards and requirements.

The Bureau should continue to review an institution's compliance history in determining whether to deny an institution's reapproval application, or issue

a conditional approval. However, as a general rule, complaints should be reviewed, investigated where appropriate, and pursued to their final conclusion within the Bureau's Enforcement Program operation. If the Bureau's Enforcement Program determines that an institution has violated the Reform Act's standards and requirements, it can:

- Issue a formal warning letter, if authorized by statute to do so
- Cite the institution
- Fine the institution
- Place the institution on probation for a period of time, not to exceed 24 months, and subject the institution to special monitoring, reporting, and site visits during this period[112]
- Suspend or revoke the institution's approval to operate.

The Bureau should avoid the practice of "leveraging" its approval authority to obtain resolution of an individual or small number of complaints, or to informally extract concessions from an institution without due process.

Recommendation L-6: Reduce documentation requirements for complaints that are resolved or closed without being referred for investigation.

Currently, Bureau staff prepare a full-text report at the completion of their review and investigation of all complaints, irrespective of whether or not violations are found. These reports document the alleged violations, results of the Bureau's review and investigation of the complaint, and the Bureau's findings and conclusions. In cases where no violations are found, Bureau staff should not have to prepare a full-text report documenting these findings in all cases. Instead, wherever possible, a standard form letter should be issued stating that the Bureau reviewed and researched the complaint, and did not find that any violations occurred. Full-text reports should only be prepared on an exception basis.

Recommendation L-7: Develop and implement a plan for reducing the backlog of pending complaints.

The Bureau should establish overall goals, and individual goals for specific staff, that provide for a significant reduction of the backlog of pending complaints within the next 6 and 12 months.

[112] 94901(h) and 94915(j)

M. Voluntary and Mandatory Arbitration Procedures

The Bureau has not yet submitted regulations to establish a voluntary arbitration process for resolution of disputes between complainants and approved institutions as clearly and specifically required by Section 94778(b) of the Reform Act. Such a process could be beneficial to both institutions and complainants in cases where the parties have not otherwise agreed to resolve disputes in another manner.

Bureau staff and other stakeholders disagree as to whether the Reform Act prohibits inclusion of a mandatory arbitration clause in an institution's enrollment agreement, and whether the Bureau can deny an application in cases where an institution's enrollment agreement includes a mandatory arbitration clause. Proponents of the position that the Reform Act prohibits inclusion of mandatory arbitration clauses cite Sections 94876 and 94877(b) of Article 7 (the *Maxine Waters Act*). Collectively, these provisions:

- Enable a student to bring action against an institution for a violation of Article 7
- Prohibit students from waiving any provision of Article 7
- Declare any waiver or limitation of a substantive or procedural right to be void and unenforceable.

Additionally, proponents of this position cite Section 94877(f) of Article 7 which states that:

> "Any provision in any agreement that purports to require a student to invoke any grievance dispute procedures established by the institution or any other procedures before bringing an action to enforce any right or remedy is void and unenforceable."

There is disagreement as to whether the phrase "grievance dispute procedure" encompasses mandatory arbitration agreements. As a result, there also is disagreement as to whether inclusion of a mandatory arbitration clause in an enrollment agreement is a violation of the Article 7. Finally, there is disagreement as to whether the Bureau can deny an application that includes a mandatory arbitration clause since denial of the application might not be justified if inclusion of a mandatory arbitration clause is not prohibited.

Recommendation M-1: Prepare and submit proposed voluntary arbitration program regulations and request funding to support the program's implementation.

The Bureau should finalize and submit proposed regulations to establish a voluntary arbitration program as specifically required by Section 94778(b). Preparation of these proposed regulations need not be dependent on resolution of issues concerning whether inclusion of a mandatory arbitration clause in an enrollment agreement is prohibited, or whether the Bureau can deny an application in cases where an institution's enrollment agreement includes a mandatory arbitration clause.

Recommendation M-2: Amend Section 94877(f) of the Reform Act to clarify whether mandatory arbitration clauses are prohibited from being included in enrollment agreements for programs subject to Article 7.

Section 94877(f) of the Reform Act should be amended to specify whether or not mandatory arbitration clauses are prohibited from being included in an institution's enrollment agreement for programs subject to Article 7 requirements. Currently, the Bureau does not deny the applications of institutions that include a mandatory arbitration clause in their enrollment agreement. Some stakeholders have suggested that the Bureau has statutory authority to deny these applications and, therefore, cannot decide not to do so.

N. Student Tuition Recovery Fund

1. STRF Administration Costs

From creation of the Bureau in 1998 through 2003/04, the Bureau had a budget of less than $100,000 for administration of the STRF Program. For 2004/05, a somewhat higher $112,688 budget was provided. However, throughout this period, the Bureau actually incurred significantly greater administrative costs that were budgeted (at least several hundred thousand dollars per year). The cumulative amount of excess administrative expenditures cannot be specifically determined because information regarding staff time expenditures, by program, is not maintained, but is certainly more than $1 million, and possibly as much as $2 million. All of these excess costs have been improperly funded from the Bureau's 0305 Fund, which is nearly insolvent.

Needs exist to adjust the STRF Program budget to reflect the actual costs of administering the STRF Program. However, there currently are ceilings set in statute regarding the maximum amount of administrative costs that can be budgeted ($300,000 for the Non-Degree account, and $100,000 for the Degree account). The budget for STRF administrative costs, as well as for each account within the STRF Fund, should be established through the state's conventional budgeting process based on workload and cost factors. The budgeting process is subject to both Department of Finance and Legislative oversight. Rigid caps on the maximum amount of administrative costs that can be budgeted should not be set forth in statute.

The following three (3) recommendations are structured to address these issues.

Recommendation N-1: Repeal the statutory caps on STRF administrative expenditures.

Recommendation N-2: Adjust the STRF Program budget so that it is consistent with actual costs associated with administering the STRF Program, and make offsetting reductions to the 0305 Program budget.

Recommendation N-3: Require that the STRF repay at least $1 million to the 0305 Fund.

2. STRF Account Balances, Claim Payments, and Assessments

As of June 30, 2005, the balance in the Non-Degree account within the STRF was minus $1.9 million. These circumstances are the result of the Bureau's practice of using Degree account funds to pay claims related to non-degree school closures during the latter half of 2003/04 and throughout 2004/05. The deficit balance in the Non-Degree account would be even larger if the full costs of administering the non-degree component of the program were allocated to the Non-Degree account (e.g., minus $3 million, or more).

The costs associated with payment of non-degree claims have been heavily cross-subsidized by the 0305 Fund and by funds paid by students enrolled at degree-granting institutions. Bureau management recently enacted policies that will reduce, but not eliminate, the amount of these cross-subsidies.

Students enrolled in degree programs should not be required to fund the payment of claims resulting from the closure of non-degree programs. Instead, higher STRF assessments should be paid by students enrolled in non-degree programs, which, collectively, have a greater risk of closure that lead to STRF claims. Non-degree assessments should be increased to a level that is consistent with the costs of STRF claims involving non-degree programs. Concurrently, the assessments paid by students enrolled in degree programs should be reduced to a level consistent with costs of STRF claims involving degree programs.

The following three (3) recommendations are structured to address these issues.

Recommendation N-4: Modify the statutes to enable crediting of assessments to the STRF Fund by type of program, rather than type of institution, so that assessments paid by students enrolled in non-degree programs at degree-granting institutions can be credited to the non-degree account, rather than the degree account.

Recommendation N-5: Increase the statutory cap on the maximum amount of funds that can be accumulated in the STRF degree account in order to provide a sufficiently large reserve fund to absorb a potential spike in claims resulting from closure of a degree-granting institution (e.g., $3 million, versus the current $1.5 million cap), and restore the STRF assessment for students enrolled in degree programs, but at a lower level that is consistent with ongoing costs of degree program-related STRF claims.

Recommendation N-6: Increase the STRF assessment for students enrolled in non-degree programs to a level sufficient to (1) fully fund the ongoing costs of non-degree program-related closures and associated claims, and (2) restore the Degree account and 0305 Fund for prior year administrative and claim payment costs that were improperly funded from these other sources.

3. Verification of STRF Assessments and Payments

The Bureau has not been verifying or auditing institutions' STRF remittances. A consensus exists among Bureau staff that many institutions remit significantly smaller amounts than are actually owed. It is not fair that some institutions regularly collect and pay a full STRF assessment, while other institutions unlawfully collect and/or pay only portion of what is owed, or nothing at all. The following three (3) recommendations are structured to address these issues.

Recommendation N-7: Provide budget authority to the Bureau to contract for one-time services to audit STRF liabilities and payments for all institutions over, at least, the past three (3) years. Results of the audit should be used by the Bureau to pursue collection of past due amounts, and to cite and fine institutions that have violated the law. If necessary, modify the statutes so that payment of a fine does not absolve an institution of responsibility to pay past due STRF assessments.

Recommendation N-8: Establish and implement (as part of the audit of STRF liabilities and payments) a procedure for refunding excess supplemental assessments that were credited to some institutions' STRF accounts in prior years, but are unlikely to be used within the next several years, if ever. If necessary, the Bureau and the California Association of Private Postsecondary Schools (CAPPS) may need to jointly agree to modify the settlement agreement controlling the release of these funds. Also, the Bureau may need to (1) obtain statutory or regulatory authority to issue the refunds and (2) encourage institutions to submit a claim for the amount that they are owed. Authority also should be provided for the Bureau to use the funds to pay STRF administrative costs in cases where the institutions have closed and the funds cannot be refunded.

Recommendation N-9: Authorize additional funding and staffing resources to enable the Bureau to perform ongoing STRF collection and remittance compliance monitoring functions. Two (2) to three (3) additional positions may be needed.

O. Annual Reporting

Many institutions are chronically delinquent in submitting their annual reports. However, the Bureau does not review or validate the information that is submitted, and only makes limited use of this data for monitoring or other purposes.

There are significant inconsistencies between the completion and placement rate data that is required to be provided for individual programs depending on whether or not the programs are subject to Article 7 (*Maxine Waters Act*) requirements. Additionally, this data is required to be reported by non-Article 7 institutions on a calendar year basis, while Article 7 institutions are required to report the data on a fiscal year basis. Also, there are some inconsistencies between the data that is required to be provided in an institution's annual reports and similar types of data that they are required to disclose to students. Some of the performance metrics that are required to be provided are of questionable utility or value and, in some cases, may be misleading.

The Bureau does not summarize the annual report data that has been received in a report that is available to the public, or otherwise make the information accessible to prospective students or the general public, or even to staff within the Bureau.

There potentially is tremendous value to be gained from collecting and publicizing valid financial, enrollment, completion, exam passage, and job placement data for all Bureau-approved programs. Such information could be used to monitor the performance of individual institutions as well as the performance of the statewide system as a whole. Concurrently, prospective students could use this same data to compare programs before making enrollment decisions, which could differentially benefit better performing institutions.

The following five (5) recommendations are intended to overhaul the current annual reporting process.

Recommendation O-1: Require institutions to separately submit their institutional financial report and their program-specific operational and performance data. The financial component of the annual reports should be required to be submitted within 90 days of the completion of the institution's fiscal year.

It is critical that the Bureau be provided with financial information on a timely basis. These submissions should not be linked to submission of program-specific data which may by submitted at a later date for the same reporting period due to needs to complete various graduate tracking activities.

Recommendation O-2: Develop a single, uniform master set of program-specific profile and performance statistical data elements, and then apply as appropriate to the type of program involved (e.g., degree, non-degree, registration).

The data elements should be fully consistent with similar disclosures that are required to be provided to students. Percentages or rates should be avoided for reporting purposes. Instead, numerator and denominator values should be provided as it is informative to know whether a graduation, placement, or exam passage rate is based on a small or large group of students, and the resultant percentages or rates can be automatically calculated. Where averages are provided, information should be supplied regarding the number of values on which the average is based and the range of these values. Program-specific data should be required to be submitted on an annual basis following completion of required graduate tracking activities, where applicable.

Recommendation O-3: Develop a system to enable all institutions to submit their annual report data electronically. The Bureau should review all reports for completeness, and validate the data provided for a significant random sample of institutions and programs each year (e.g., 20 percent).

The Bureau should require that annual report data be submitted electronically, and provide institutions with the capability to do so either directly or by submitting a CD or diskette containing the data.

Recommendation O-4: Develop a system to enable the general public to access institutional profile and performance information through the Bureau's web site.

Public access to comparative program profile and performance data through the Bureau would benefit consumers by enabling better-informed program selection decisions.

Recommendation O-5: Obtain authorization for additional resources to develop and implement a restructured annual reporting program.

Significant additional funding and staffing resources are needed to enable the Bureau to develop and implement a restructured annual reporting process. Up to five (5) additional positions may be required, including resources for application development, compliance monitoring, data verification, data compilation and reporting, and public information functions.

P. Biennial Financial Reporting

Section 94862, which requires preparation and submission of biennial financial reports by institutions that are subject to Article 7 requirements, is redundant. Section 94806 separately requires that all institutions file annual financial reports containing a complete set of financial statements prepared in accordance with generally accepted accounting principles (GAAP). Institutions that collect $750,000 or more in fees must have these annual reports either reviewed or audited by an independent certified public accountant. All institutions also are required to:

- Retain work papers supporting the financial statements for five (5) years from the date of the reports
- Make the work papers available to the Bureau upon request
- Include their most recent financial report to the Bureau with any application for approval to operate that is submitted.

Section 94806 does not require that institutions report their "average monthly expenditures" as is required by Section 94862, but this information can be easily derived from the annual expenditure information provided in the institution's standard financial statements, if it is actually needed. Therefore, there is no substantive difference between Section 94862 and Section 94806 reporting requirements, except for the reduced frequency with which the reports are required to be submitted under Section 94862.

Section 94862 also only imposes work paper retention requirements on audit work papers. This conflicts with the provisions of Section 94806(b)(6) which requires that supporting work papers be retained for five (5) years, irrespective of whether the financial statements have been audited.

The Reform Act specifies that if there is any conflict between Article 7 and "any other law," then Article 7 shall prevail.[113] Accordingly, to reconcile the conflict between the Reform Act's annual and biennial reporting requirements, the Bureau's regulations permit institutions to substitute a biennial report for their annual report. Institutions should not have to satisfy conflicting reporting requirements on an alternate year basis. The Bureau, to its credit, has not actually required that Article 7 institutions comply with this reporting requirement.

Recommendation P-1: Repeal the redundant biennial reporting requirement imposed on institutions subject to Article 7 requirements.

The statutes requiring preparation and submission of biennial financial reports by institutions that are subject to Article 7 requirements should be repealed. These statutes are redundant and confusing.

[113] Section 94850(f)

Q. Outreach and Education

SB 364 directed that the Bureau should expand its outreach program for current and prospective students, subject to first determining and reporting to the Director of DCA and the Joint Committee on its fee structure and revenues and, thereafter, upon the Director of DCA finding that the Bureau had sufficient revenues to fulfill its statutory obligations and that the costs of an expanded outreach program would not jeopardize the Bureau's capability to fulfill those obligations. The Bureau does not currently participate in any substantive student outreach activities and the Bureau does not have financial or other resources to support an expansion of its outreach activities given the extent to which it is not fulfilling its current statutory obligations. The Bureau is currently providing minimal support to a limited high school student outreach program maintained by the DCA's Consumer and Community Relations Division.

At such time in the future that the Bureau anticipates having financial resources available to support development and implementation of an outreach program for prospective students, it should, at that time, prepare and submit a fully documented budget change proposal that identifies a range of alternative outreach programs that were considered, and that presents the anticipated benefits and costs for each alternative, with an accompanying recommendation. The Bureau's proposals should also include strategies for conducting outreach activities targeted to industry to discourage the offering of unapproved programs and courses of instruction.

Recommendation Q-1: Defer implementation of a new or expanded Outreach Program.

The Bureau should defer implementation of new or expanded outreach programs until (1) adequate financial resources are available to support such efforts, (2) current statutory obligations are being fulfilled, (3) a range of alternative outreach programs, and associated costs, has been identified and assessed through the budget change proposal process, and (4) approval has been obtained for the additional staffing resources and expenditure authority needed to implement the program.

R. Veterans Education Program (Title 38)

In recent years, the Bureau has not fully expended the funds available under its Title 38 contract, and has not consistently fulfilled the VA's service delivery expectations. The Bureau recently transferred one (1) Education Specialist position and one (1) Senior Education Specialist position to the Title 38 Program from the Non-Degree and Degree Units, respectively. The transfer of these two (2) positions restored positions lost during the hiring freeze and subsequent vacant position sweeps that occurred during 2001 and 2002, and should enable the Bureau to provide the level of service expected under its contract with the Veterans Administration. Concurrently, these position transfers will help the Bureau to achieve 0305 Fund cost-savings needed to avoid insolvency. However, realization of these fiscal benefits is dependent on approval of a pending 2006/07 BCP that includes a current year (2005/06) component reflecting the re-direction of the two (2) positions.

> **Recommendation R-1: Continue efforts to obtain approval of a BCP to re-direct two currently authorized Education Specialist series positions to the Title 38 Program.**

S. Bureau Annual Reports

Annual reporting requirements are important for ensuring program accountability. The Bureau is required to prepare and submit an Annual Report by January 31st of each calendar year for the previous fiscal year. The Bureau has not complied with this requirement for the past two (2) years. Additionally, the annual reports prepared in some prior years were very limited in terms of the information that they contained.

The statutes should be revised to more specifically define the Legislature's expectations regarding the submission of quality annual reports. Additionally, the statutes should delineate the types of statistical and other information that that the annual reports should contain. Finally, the reports covering a fiscal year should be required to be submitted on a more timely basis (e.g., within four months of the end of each fiscal year).

Recommendation S-1: Revise the statutes governing the Bureau's annual reports to more specifically delineate the Legislature's expectations and requirements, including provision of workload and backlog statistics, and other program profile information, for each major component of the state's regulatory program.

Recommendation S-2: Require submission of the annual reports, including accompanying discussion of the Bureau's operational performance and plans for subsequent reporting periods, by October 31st of each year for the preceding fiscal year.

T. Complaint Disclosure

The Reform Act does not specifically delineate requirements related to the Bureau's disclosure of consumer complaints but, instead, requires that the Bureau specify its procedures for complaint disclosure in regulations that it has not yet adopted.[114] The Reform Act does, however, require disclosure of "... the nature and disposition of all complaints on file ...".[115]

Currently, Bureau staff disclose the following information regarding all complaints received, including all pending and all closed complaints, irrespective of their disposition:

- Number of complaints
- Nature of each complaint
- Date received
- Date closed
- Disposition.

This above information is provided irrespective of whether the request is received in writing or verbally over the telephone.

The Bureau's procedure regarding complaint disclosures[116] references the Public Records Act[117] and the Information Practices Act.[118] The procedure does not differentiate between complaints where it has been determined that a violation occurred or the disposition of the complaint, or require issuance of any disclaimers or cautionary statements regarding the information that is disclosed.

The Department has separately published a set of recommended minimum standards for consumer complaint disclosure which also are derived from the state's Public Records Act and Information Practices Act requirements. The Department's recommended minimum standards, state that "it is the policy of the Department to provide consumer complaint information to consumers consistent with these standards."

Pursuant to these minimum standards, complaint information is required to be disclosed when an Executive Officer or a Chief, or his or her designee, has determined that:

- A substantiated consumer transaction has occurred
- The business has been provided an opportunity to respond to the complaint
- A probable violation of law has occurred or there is a possible risk of harm to the public, and

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[114] Section 94960

[115] Section 94779

[116] Number 02-002, dated January 1, 2002

[117] Government Code, Section 6250, et. seq.

[118] Civil Code, Sections 1798.1 and 1798.24

- The complaint will be referred for legal action.

The Department's recommended minimum standards also specifically provide that information about a complaint should not be disclosed if it is determined that:

- The complaint is without merit
- The complaint involves a non-consumer matter (e.g., labor grievances, labor relations, tax matter, etc.), or
- Disclosure is prohibited by statute or regulation.

Finally, the Department's recommended minimum standards require that the disclosure of information regarding pending complaints include a disclaimer stating that "the complaint(s) against the business is/are alleged, and no final legal determination has been made."

The Bureau's current practice of disclosing all complaints without any accompanying standard disclaimers or cautionary statements, and irrespective of its determination of whether a violation has occurred and the disposition of the complaints, is not consistent with the Department's recommended minimum standards. The Bureau's current practices are fully consistent with Section 94779 requirements for disclosure of information regarding "the nature and disposition of all complaints."

Current statutory requirements for the Bureau to review and investigate complaints, and then disclose information about the complaints irrespective of the complaint's merits or whether a violation of law occurred, may be prejudicial to the institutions that are the subject of complaints that the Bureau has determined are unsubstantiated or without merit. Information regarding such complaints should not remain a part of the institution's permanent public record in such cases.

Recommendation T-1: Revise the statutes so that the Bureau is not required to disclose information regarding closed complaints in cases where it is unable to substantiate the merits of the complaint or whether a violation occurred.

Recommendation T-2: Adopt regulations governing complaint disclosures consistent with revised statutory requirements and the Department's recommended minimum standards for consumer complaint disclosure.

Recommendation T-3: Provide public access to complaint information through the Bureau's web site, following adoption and implementation of regulations governing complaint disclosures that are consistent with statutory requirements and the Department's minimum standards.

U. Transferability of Credits Disclosure

Section 94816(b) of the Reform Act requires that all institutions offering a degree program designed to prepare students for a particular vocation, trade, or career field, and each institution subject to Article 7, provide to each prospective student the following disclosure statement:

> **NOTICE CONCERNING TRANSFERABILITY OF UNITS AND DEGREES EARNED AT OUR SCHOOL**
>
> Units you earn in our *(fill in name of program)* program in most cases will probably not be transferable to any other college or university. For example, if you entered our school as a freshman, you will still be a freshman if you enter another college or university at some time in the future even though you earned units here at our school. In addition, if you earn a degree, diploma, or certificate in *(fill in name of program)* program, in most cases it will probably not serve as a basis for obtaining a higher level degree at another college or university.[119]

While the above disclosure is consistent with actual circumstances at most approved degree-granting institutions, it is not always true (e.g., at some non-WASC regionally accredited institutions). Consistent with this variability, the Reform Act requires that the Bureau "take into consideration the character of the educational program in determining whether specific programs may be excluded from the disclosure requirement."[120]

Few institutions have raised an issue with the Bureau regarding requirements to provide the above disclosure. In cases where an issue regarding this disclosure requirement has surfaced, Bureau staff sometimes permit the institution to provide supplemental, offsetting affirmative disclosures, provided that the institution demonstrates to the Bureau that the credits and/or degrees are transferable (e.g., by providing copies of matriculation agreements with other institutions, or other evidence showing the transferability of the credits and/or degrees). However, these practices may not always have been consistently or uniformly applied, and the Bureau has not always routinely verified that approved institutions have been providing prospective students with the standard disclosure when required to do so. The Bureau has not adopted regulations, or policies or procedures, governing the circumstances and requirements necessary to obtain an exclusion, or to provide offsetting affirmative positive disclosures.

In cases where institutions are required to provide a disclosure that units/degrees in a particular program are probably not transferable to any other college or university, when the units/degrees actually are transferable, it may be confusing to prospective students and harmful to the business interests of the institution. In such cases, the Bureau should

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[119] Section 94816 (b)

[120] Section 94816(c)

proactively exercise the use of its authority to determine whether such a disclosure need not be provided.

Recommendation U-1: Develop an alternate disclosure regarding the transferability of units and degrees for potential use by institutions in cases where the units or degrees earned in particular programs are somewhat, or very, likely to be transferable to other colleges or universities.

The alternate disclosure, and accompanying requirements for its use, should be implemented through the adoption of regulations. If necessary, the statutes should be revised to enable adoption of an alternate disclosure regarding transferability of units and degrees.

V. Bureau Organization and Staffing

The history of this program shows that a number of mission critical functions have been performed on either a sporadic basis, or at a superficial level, or not performed at all. Examples include:

- Conduct of triennial site reviews of specified nationally accredited degree-granting not-for-profit institutions operating as non-profit public benefit corporations
- Verification of Article 7 exemption self-certifications
- Conduct of site reviews of new, non-degree institutions
- Conduct of interim site inspections, including unannounced site visits
- Conduct of reapproval site visits, especially in cases where interim inspections have not been performed
- Review of financial information submitted with both initial and reapproval applications
- Development of systems to enable institutions to submit annual report data electronically
- Verification of annual report statistical data
- Compilation and publication of annual report statistical data
- Verification of annual fee payments
- Verification of STRF collections and remittances
- Proactive investigation of unapproved institutions
- Formal investigation of student complaints including, where appropriate, conduct of site visits structured to determine whether other students have experienced the same type of problem at the institution
- Documenting compliance deficiencies, issuing citations and fines, and imposing administrative disciplinary actions, including placing approved institutions on probation, or suspending or revoking approvals to operate.

Additionally, a large backlog of pending applications was inherited by the Bureau in 1998, and further backlogs accumulated during the Bureau's first year of operations. Since that time, and notwithstanding staffing reductions subsequently imposed in response to the state's general fund budget crisis, Bureau staff have made continuous progress in reducing the number of pending applications. However, Bureau staff have not yet been able to get current with this work, much less attend to all of these other obligations. Furthermore, the progress that has been made is currently in jeopardy of being reversed as a result of needs to reduce expenditures due to the Bureau's own general fund fiscal crisis.

Due to its current fiscal circumstances, the Bureau has been forced to (1) nearly eliminate the use of retired annuitants and temporary help services, (2) hold authorized positions vacant to generate surplus salary savings, and (3) redirect some positions to the Title 38 Program. As a result of these changes, each of the Bureau's Education Specialists are now assigned about 150 approved institutions, versus an average of about 100 approved institutions previously, plus a pro rata share of all new institution applications. It

probably is not realistic to expect that these staff will be able to keep pace with the flow of applications received from all of these institutions, and, concurrently, continue to reduce backlog of pending applications, including site visits of institutions that are operating under a temporary approval.

Additional staffing resources are needed to keep pace with current workload demands, ensure that application reviews are adequately performed, and further reduce backlogs so that approvals are issued within a reasonable timeframe. The Bureau, and the predecessor Council, previously had about 70 authorized positions, most of which were filled, compared to only about 57 filled positions now. As previously recommended, additional in-house staffing resources are needed for the following purposes:

- To replace the four (4) Education Specialist series positions that were redirected to the Title 38 Program and the Bureau's new Enforcement Unit and, thereby, reduce application processing workloads to more manageable levels
- To enable staff to complete substantive site reviews of new non-degree institutions using site visit teams where appropriate and practicable to do so
- To develop and maintain a regular inspection program, including unannounced inspections
- To ensure compliance with annual reporting requirements
- To develop and maintain processes for validating annual report statistical data
- To continuously review annual fee payments
- To continuously audit STRF assessments and payments
- To conduct formal investigations of student complaints, where warranted
- To develop and implement a proactive enforcement program targeting unapproved institutions.

Additionally, funding is needed to obtain outside staffing resources for the following purposes:

- To develop a system to enable institutions to submit annual report statistical data electronically, following overhaul of the reporting requirements
- To conduct reviews of financial information submitted by institutions with their applications
- To conduct of a one-time audit of STRF assessments and payments over the past three (3) years.

Recommendation V-1: Restore the Bureau's aggregate authorized staffing levels to the levels that were authorized prior to imposition of the hiring freezes and vacant position sweeps that were imposed between 2001 and 2003, and provide funding for outside staffing resources for specialized services.

The Bureau recently began implementing a partial internal organizational restructuring under which it is attempting to establish a new Enforcement Unit. Initial staffing for the Unit includes one (1) Education Administrator position and two (2) Education Specialist

positions previously assigned to the Non-Degree Program. While the Monitor supports the Bureau's overall goals and objectives in establishing this new unit, and the Bureau's decision to redirect one of its Education Administrator positions to serve as manager of the unit, we are concerned about the adequacy of the Non-Degree Program's staffing and the adverse impacts that the redirections may have on the Bureau's Non-Degree Program application approval processes.

Recommendation V-2: Defer current plans to redirect scarce Education Specialist Series positions to the new Enforcement Unit.

To the fullest extent possible, the Bureau should first seek to staff the new Enforcement Unit with positions in other classifications that are capable of performing many required inspection, compliance monitoring, and enforcement functions, while concurrently serving to provide additional training for these staff that could help to qualify them for eventual promotion into Education Specialist series positions. The Bureau has already developed duty statements that delineate the types of activities that may be performed by these staff consistent with their position classifications.

W. 0305 Fund Revenues and Fund Condition

Prior to formation of the Bureau, the balance in the Bureau's 0305 Fund was more than $5 million versus a current balance of less than $300,000. As shown by **Table 36**, below, during the past four (4) years, the Bureau's 0305 Fund expenditures have exceeded revenues by over $2.25 million, as follows:

Table 36
0305 Fund Deficits

Fiscal Year	Deficit (000s)
2001/02	($1,203)
2002/03	($469)
2003/04	($162)
2004/05	($417)
Total	**($2,251)**

Source: CALSTARS reports.

Because a disproportionate share of revenues are typically received during certain months of the year (e.g., December, January, and June), the Bureau may fully deplete its remaining fund balance at some point during 2005/06, even with the implementation of currently planned cost-saving measures. If the Bureau's pending proposals to realign the 0305, STRF, and Title 38 budgets are not approved, the 0305 Fund could become insolvent prior to the end of the current fiscal year.

On an aggregate basis, the Bureau's fees are possibly sufficient to fund the Bureau's current program administration costs, assuming that the 0305, STRF, and Title 38 program budgets are realigned as currently proposed. However, even if the aggregate amount of fee collections is sufficient to fund current program administration costs, there are a number of areas where current fees are not aligned with the Bureau's costs for the services provided. For example:

- COA application fees are significantly higher than actual costs associated with processing COA applications, while application fees appear to be significantly lower than actual costs for new non-degree institutions, non-degree program and course additions, and non-degree institution reapprovals
- Application fees for degree-granting institution reapprovals are somewhat higher, on average, than actual costs of processing these applications.

Additionally, the Bureau's current fee structure does not provide sufficient revenues that are needed to support the performance of new institution site review, financial statement

review, compliance monitoring, institution inspection, and unapproved institution enforcement activities that are currently performed only superficially or on a sporadic basis, or are not performed at all.

A 30 percent increase in fees, which would generate an additional $1.5 million in revenues, would enable the Bureau to hire 12 to 15 additional staff and contract for specialized services. With these additional resources, the Bureau would be better able to perform most of its most critical, statutorily-mandated responsibilities. An expanded outreach program, or other new services, would require additional fees increases. Conversely, without a fee increase, the Bureau will be forced to continue to control costs by delaying the filling of vacant positions when turnover occurs, or eliminating positions completely. Such actions will adversely impact the Bureau's capabilities to continue to perform current activities and further reduce the level of service provided to both students and institutions.

Recommendation W-1: Realign the current fee structure so that it is consistent with the Bureau's actual costs, and increase fees to a level sufficient to fund needed new institution site inspection, financial statement review, compliance monitoring, institution inspection, and unapproved institution enforcement activities.

X. Management Information and Fiscal Systems

The SAIL system has the capability to provide significant benefits for purposes of managing, operating, and overseeing all of the various components of the Bureau's regulatory program. As an example, the Bureau's recent initiative to identify past due annual fees and initiate follow-up collection activities would have been much more difficult to accomplish without the SAIL system. However, the Bureau has never reconciled the SAIL system's revenue reports with revenue reports produced from the CALSTARS system. Also, a full set of management information reports has not yet been defined or developed that will enable management and staff to effectively utilize all of the information that is currently captured by the SAIL system. Also, the Bureau has not established processes for continuously reviewing SAIL records and reports to ensure that data quality and integrity are maintained. Finally, as with any new management information system, there are a number of minor programming bugs that still need to be corrected, as well as needs for development of additional functionalities in various program areas.

Recommendation X-1: Restructure the CALSTARS revenue account structure to be more consistent with the more detailed revenue account structure used by the SAIL system

Recommendation X-2: Periodically reconcile SAIL and CALSTARS revenue reports. As necessary, modify SAIL system revenue reporting to resolve any inconsistencies between the two systems.

Recommendation X-3: Continuously review SAIL records and management reports to ensure that data quality and integrity are maintained.

Recommendation X-4: Develop a structured plan for ongoing improvement to the SAIL system's management reporting and functional capabilities.