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Macias, Wendy

From: [REDACTED]
Sent: Tuesday, June 23, 2009 2:44 PM
To: neareq09
Cc: [REDACTED]
Subject: Written Comments Re: Hearings on Neg. Rulemaking
Attachments: Written Comments RE Neg Rulemaking Issues.pdf; Supporting Documents (attachments).pdf

Dear Sir or Madam:

Attached are written comments being submitted in response to the hearings on negotiated rulemaking.

[REDACTED]
Legal Aid Foundation Los Angeles
[REDACTED]

Macias, Wendy

From: [REDACTED]
Sent: Wednesday, June 24, 2009 6:18 PM
To: negreq09
Cc: [REDACTED]
Subject: Correction in Comments
Attachments: Written Comments RE_ Negotiated Rulemaking Hearings.pdf; Supporting Documents (attachments).pdf

Dear Sir or Madam,

There was a typo in a set of comments I sent yesterday on behalf of [REDACTED]. Her correct email address is [REDACTED]. I've attached a corrected set of the written comments and the supporting documents. 'm sorry for my mistake and any inconvenience it may cause, but please send any correspondences regarding the negotiated rulemaking hearings to the corrected email address.

Thanks,

[REDACTED]
[REDACTED]
Legal Aid Foundation Los Angeles
[REDACTED]

Written Comments RE: Hearings for Issues under Negotiated Rulemaking


Senior Attorney
Legal Aid Foundation Los Angeles


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III. Attachments

**Exhibit A: Testimony of the [REDACTED] U.S. House of
Representatives, Committee on Education and the Workforce, Full
Committee Hearing on "Enforcement of Federal Anti-Fraud Laws in for-
Profit Education"**

**Exhibit B: "Disputes Over Regulating For-Profit Colleges Come to a Head in
California." The Chronicle of Higher Education.**

**Exhibit C: The Private Post Secondary and Vocation Education Reform Act
– relevant sections pertaining to student protections.**

**Exhibit D: The Private Post Secondary and Vocational Education Reform
Act, §94854**

**Exhibit E: [REDACTED] "Gatekeeping in the Student Financial
Assistance Programs."**

**Exhibit F: "The State Alleged Diploma Mill Used Churches to Recruit
Pupils" and "School Settles Suit Over Fake Diplomas," Los Angeles Times.**

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I. BACKGROUND

I have been involved in handling trade school abuses since the middle of 1980's. I help to draft the Maxine Waters School Reform and Student protection Act of 1989, the reauthorization of the Act in 1997 and its many amendments. I drafted the original 85/15 language and have participated in negotiated rulemaking several times. Despite the aforementioned legislation these fraudulent schools continue to thrive unabated. However, the problem appears to be worsening. I continue to see countless victims ripped off by vocational schools and saddled with substantially increasing amounts of debt. And the severity of this negative and long lasting impact on students' lives cannot be exaggerated. Due to time constrain this document is not a comprehensive list of regulatory ideas; however, it proposes how to address the areas with the highest demand for change. My comments are directed at proprietary schools which offer vocational degrees, as well as, non-degree courses of instruction. I hope some of these issues are addressed in the upcoming negotiated rule making sessions.

I have not described or listed all the things that need to be done to address these problems because many of these issues would require statutory changes. Accordingly, I have limited my comments to recommendations that can be changed by regulations. **I have attached to this report the testimony of Maxine Waters from a congressional hearing on trade school fraud in 2005 (See Exhibit A). This testimony sets forth the nature of the problem. I am also attaching an article from the Higher Education Chronicle about the disastrous chain of events that have taken place in California (See Exhibit B). The article pertains to events in history which took place two to three summers ago regarding trade schools. I have also attached some of the student protections that were contained within California's Postsecondary Act and the Maxine Waters School Reform and Student Protection Act of 1989 (See Exhibit C). Both Acts have expired because the Bush administration refused to enforce federal law and discontinued Title IV aid to those schools whose state approval to operate had expired.**

II. ISSUES TO BE ADDRESSED BY REGULATION

- A. Accrediting agencies should be subject to additional regulations to increase the specificity, measurability, and uniformity of outcome standards and to ensure only quality programs receive accreditation.**

Additional regulations are needed to ensure that accrediting agencies only accredit schools that provide quality educational or training programs. Regulations are also needed to require that the accreditors' outcome-standards are specific, meaningful, numerical, measurable, uniform, comparable, enforceable, verifiable and absolute.

Accrediting agencies have continually failed to root out fraud and abusive conduct on the part of trade schools. Yet the accrediting agencies, approved by the Secretary are supposed to be "reliable authorit(ies) as to the quality of education or training offered." The Nunn Committee (Senate Permanent Subcommittee on Investigations) submitted its report on Abuses in Federal Student Aid programs in May 1991.

The Nunn report recommended that the accrediting agencies be eliminated as part of the triad of gatekeepers unless the agencies demonstrated their ability to screen out abusive and substandard schools. This has not happened. The report further recommended that the Department create uniform minimum quality assurance standards to be enforced by the accrediting agencies. The Department should also require by regulation that the accrediting agencies verify and review school data to ensure that uniform standards outcome are being enforced, applied and met.

The 1992 Higher Education Amendments acknowledged that specific accreditation and institutional performance standards were needed. Section 496 directed the Department to establish standards that were reliable indicators of the quality of the instruction provided. The same amendments required the accrediting agencies to have 12 sets of institutional review standards. One of the new standards, included in the amendments, was the creation of standards to measure student outcomes. The law required that accrediting agencies assess the institution's success including "consideration of course completion, state licensing examination and job placement rates."

Unfortunately the Department's accrediting agency regulations have not done anything to resolve the problem and merely repeated the statutory language. There were no guidelines, set forth in regulation, for the creation of meaningful outcome-standards nor are there any regulations indicating the specifics as to how the accrediting agencies must enforce the outcome-standards against the schools it accredits and how it must create specific enforceable definitions of completion, placement and the exam passage rate. Also, regulations are needed which require that the accrediting agencies verify the results reported by the school with respect to outcome-standards such as job placement. Further, there is no regulatory standards that require that the schools keep a job log so that its placement figures can be verified or that accrediting agencies require this of its schools.

Such regulations need to be promulgated by the Department that define completion, placement, exam passage rate and resolve the absence of needed regulations summarized in the previous paragraph. These same definitions, once created, could be used by the state oversight agency. **Absent universal and numerical definitions, the student cannot compare the outcome results of different vocational schools offering the same course of instruction.** Currently, the definitions, used by the various accrediting agencies are not uniform, so the results are meaningless and are not comparable.

The accrediting agencies simply do not view it as their role to monitor and enforce federal standards and have repeatedly declined to do so. They say they are not federal regulators and it is not part of their mission. But since this is their duty per the HEA, appropriate regulations

should be promulgated requiring the accrediting agencies to do so or they should be excluded from the gate keeping function by statute and the responsibility given to another gate keeper.

It seems, given the unwillingness of the Department, in prior administrations, along with the accrediting agencies failure to enforce the law with respect to the outcome-standards, **Congress should enact legislation creating specific, uniform, comparable and measurable standards to measure student outcomes and these standards must be further elaborated on in regulations.** But these duties must be given to an agency other than the accrediting agencies that is willing to do the job.

Accrediting agencies continue to treat outcome-standards as goals toward which the schools must strive. Thus, no matter how poorly a school performs, its accreditation is rarely in jeopardy. Regulations must be adopted to create enforceable standards not goals as the accrediting agencies choose to call them.

The need for **numerical and enforceable standards** has been expressed repeatedly again by the Inspector General without any success. It is essential that the Department have reliable completion and placement requirements so it can determine if the school is admitting only qualified students (those likely to benefit from the course) and providing competent training for jobs that actually exist. The Inspector General, but not the Department under prior administrations, has recognized the need for performance standards for vocational schools to ensure adequate training that is likely to result in a job after completion of the course of instruction.

In the IG 1993 Management Improvement Report [Title IV Funding for Vocational Training Should Consider Labor Market Needs and Performance Standards] the IG provided instances where students were being trained for jobs which did not exist for most graduates of the program of instruction. One cosmetology school in Louisiana received over \$2.8 million in financial aid for 673 students but only 19 of the students obtained a state license. So the cost in financial aid was almost \$150,000 per license. I have found many vocational schools that have exceedingly low placement rates and needless to say those students that do not get jobs are more likely to default on their student loans.

Further, there needs to be regulations setting forth specific standards to be applied by the accrediting agencies to ensure that accreditation is withdrawn from poorly performing schools with respect to minimum completion, placement and exam passage standards. Regulations should make it clear to the accrediting agencies that **there must be enforceable and comparable outcome-standards and if they are not enforced, the accrediting agencies would no longer be recognized by the DOE.** It must be an absolute requirement that there are enforceable outcome-standards for vocational schools including those that are non-degree granting and those that grant a vocational degree.

- B. 34 C.F.R. 668.16 - standards of administrative eligibility should include more explicit standards and the withdrawal rate requirement should be ongoing.**

There must be more explicit standards defining administrative capability for proprietary schools. There needs to be standards that ensure that the school does not enroll any person that has not previously defaulted on a student loan. This is often the case in California. There are essentially no admission standards for many of the proprietary schools. It should be part of the DOE's responsibility to verify an institution's eligibility and certify its financial and administrative capacity.

The standards regarding satisfactory progress in 34 CFR 668.16 subsection (e) need to be more explicit. Further, there should be explicitly disapproved practices which would invalidate any satisfactory progress determination in both shorter term courses as well as those courses longer than two years. With respect to tests given at the end of a module, I have seen for-profit trade schools that: (1) repeatedly give the students the answers to the tests; (2) go over the questions that will be on the test in advance and have the students highlight the information that will be on the test; and (3) allow the students to retake the same test until they pass.

The administrative capability regulations should include specifics about the school's procedures to ensure that only competent teachers are hired who have a sound background in the subject matter of the course. I often have students complain that the instructor just reads to them from the book, cannot demonstrate basic procedures and cannot answer simple questions regarding the subject matter. The students are just told by the instructor to find the answer in the book. Instead of properly teaching the course, the teachers often spend class time chatting on the phone, reading or leaving the class for long periods of time. The institution should have procedures that prevent such inappropriate conduct and ensure that the students have instructors with adequate experience and teaching ability. The Department should pass regulations which impose these responsibilities on the schools as part of their administrative capabilities.

Schools should be required by regulations to do student surveys regarding their instructors, the equipment, and supplies. Also, they should have a complaint process and a chain of command. In addition, all oral complaints must be reduced to writing so they can be preserved. Further, complaints from students (oral and written) should be electronically sent to the USDE and the state oversight agency each year along with any steps taken by the school to resolve each of the problems presented. Plus, it should be required that each of these complaints be preserved and passed along to the employee who is at the top of the corporate hierarchy with respect to the complaints process.

The inspector general for the DOE has recommended repeatedly that there be completion and placement standards. See the Statement of [REDACTED] Inspector General U.S. Department of Education Gatekeeping in the Student Financial Assistant Program June 6, 1996 (Hereafter referred to as Bloom Gatekeeping Report). These recommendations should have been acted upon.

Withdrawal rate requirement should be ongoing. The schools should show administrative capability requirements are met both when the institution initially applies and **throughout the schools' participation in the Title IV aid program.** A provision under subsection (k) of

the section requires that a school that seeks **initial** participation in the Title IV program cannot **“have more than 33 percent of its undergraduate regular student withdraw from the institution during the institutions’ latest completed award year.”**

Regarding proprietary schools, not exceeding the 33 percent withdrawal rate, should be ongoing obligation. Without such a standard, there is it is very likely that for-profit schools will enroll every student eligible for federal financial aid even though it is obvious that the prospective student is not likely to benefit from the course. It is very important that there are built-in disincentives to signing up prospective students that are not likely to benefit from the program even assuming excellent instruction is provided.

Many for-profit schools would exceed the 33% drop out rate for most years. Regarding Brooks College in Long Beach which was exposed on 60 minutes, the completion rate for its courses ranged from 20 to 38%. So it is likely that the drop-out rate per year was significant. It also makes sense that there should be a minimum completion and placement rate factored in as part of proprietary school’s demonstration of administrative capability.

C. 34 C.F.R. 668.8 – definitions of an eligible program should include more specifics, particularly concerning job placement duties and requirements.

This section provides at several places that programs of different lengths must prepare a student for “gainful employment in a recognized occupation.” See 34 CFR part 668.8(c)(3) and subsection (d)(1)(iii) and (d)(2)(iii) and (d)(3)(ii). 34 CFR part 600.2 defines “recognized occupation” as one that is listed in the Dictionary of Occupational Titles or as designated by the Secretary. But there is no definition of what constitutes “gainful employment”. There are no limiting factors regarding this definition except for the very short term courses that must meet fixed completion and placement standards. **For the very short term course for the job to count as a placement, it must be obtained within 180 days of obtaining the degree, certificate, etc. and must be maintained for 13 weeks. These same standards should be extended by regulation for all vocational course placements.**

Additional detail needs to be added by regulation. There is no detail as to how many hours per day or week the student must work in order for his/her job to qualify as being gainful employment. **I have attached the appropriate section of the expired law in California which determined in what instances a job could count as a placement (See Exhibit D).**

The current federal law and regulation is deficient because it does not require that students be trained for the jobs that actually exist in the local economy. Further, completion and placement requirements are only imposed on the short-term classes when they should be imposed with respect to all vocational training because of the risk of loss to the federal government and the student (the risk of loss to student is far greater). A job should only be counted as a placement if the student obtained the job to which the training was represented to lead. But, even as to the very short-term courses for which there is some elaboration in the regulations, a job can be counted as a placement if it is in a **“recognized occupation for which they were trained or in a related comparable recognized occupation.”** The “related comparable recognized occupation” could be stretched to include any job. There is

no definition for this term which would be essential. This term must be very narrowly defined or eliminated.

We have seen jobs counted as a placement when the job lasted less than a day or when there was no payment to the former student. See 34 CFR 668.8 (g)(1)(ii) and (g)(2). Further, 34 CFR 668.8(g)(2) indicating what evidence would be proof of employment does not provide enough elaboration. A tax return does not tell if the job was in the occupation one was trained for or a “comparable recognized occupation.” **The school should be required to keep a job log, which can be sent electronically at appropriate intervals to the oversight agency. (See Exhibit D for completion placement requirements in California).**

Plus, there must be some requirement that training courses should be limited to those vocations that are currently in demand. The inspector general has done a report showing the importance of training students for jobs that actually exist. See the Office of Inspector General’s 1993 Management Improvement Report, “Title IV Funding for vocational Training Should Consider Labor market needs and performance Standards.”

Regulations should further require that vocational schools must disclose their completion and placement rate orally and in writing and on its website to prospective students. There must be an explicit definition of completion and placement and placement should be limited to finding employment in the job or occupations to which the training was represented to lead. Definition of placement cannot use expansive language which allows the school to count jobs in “the field of training or related fields” as many accrediting agencies currently allow. Such a standard is meaningless. Also, for jobs that require the taking of the licensing exam, the vocational schools should also be required to disclose the exam passage rate to prospective students.

D. The California Experience: proprietary schools in California do not meet the “legally authorized” requirement and additional regulation or oversight should be set forth to ensure that proprietary schools engaging in wrongful conduct do not continue to benefit by receiving federal financial aid.

Definition of Eligible Institution per 34 CFR Part 600.2 requires as a condition of eligibility for federal financial aid, that a proprietary institution of higher education, defined in Section 600.5, must be legally authorized by the state to provide instruction in the state.

Proprietary institutions in California are not eligible institutions for purposes of financial aid once their state approval to operate expires. 20 U.S.C. Section 1001(a)(2) requires that an eligible institution of higher education must be “legally authorized within such state to provide a program of education beyond secondary education. Most of the types of institutions of higher education in California satisfy these standards. **The proprietary schools in California do not meet the “legally authorized” requirement because the state law regarding such schools and the oversight agency, which granted the approvals, expired and/or ceased operation on 6/30/07. When current state approval for these proprietary schools runs out, they would no longer meet the eligible institution requirements and no longer would be eligible for federal financial aid.** Many of the proprietary schools’

approval to operate in California have expired, but they are still erroneously receiving federal financial aid.

There must be regulations requiring the secretary to take action in when a school cannot prove compliance with eligibility requirements or that its state approval is still in effect. Absent such proof, the institution should lose federal financing. This is particularly important in California and other large states where significant amounts of federal money would be at risk.

There should be regulations regarding what should happen to such schools that lose eligibility because of lack of state approval and the process these schools must follow to become recertified, renew, or regain eligibility for title IV funds. Specifically, the Department should define what would the recertification process be for such schools whose state approval has lapsed. Stringent gate keeping requirements should be imposed. (See Exhibit E: Bloom, Gatekeeping Report). At least, such schools must be required to show that they were complying with state law requirements, such as the state's 60% completion and 70% placement requirement if the school lost eligibility when these state provisions were in effect or if they agreed to comply with these requirements by signing a contract.

The meaning of 'legally authorized,' as set forth in 20 U.S.C.1001(a)(2), is defined as in 34 CFR section 600.2 as: **"The legal status granted to an institution through a charter, license or other written document issues by the appropriate agency or official of the state in which the institution is physically located."** So it is clear that the school must be legally authorized by a state agency or the appropriate state official. The definition of a proprietary institution of higher education as set forth in 34 CFR 600.5(a)(4) specifically requires that the institution be **"legally authorized to provide postsecondary program in the state in which it is physically located."** Those California proprietary institutions whose approvals to operate have expired, whether before or after the state law expired on 6/30/07, are not entitled to receive federal financial aid per the provisions of federal law. Regulations should be enacted to make this clear and detail the process for the recertification of such schools.

Since such California proprietary institutions are not currently entitled to receive federal financial aid if their state approvals have expired, there would be a necessary break in their entitlement to federal financial aid. However, many of these schools have been in violation of the law and erroneously receiving federal aid anyway because of the prior lax governmental oversight. Thus, from the expiration date of each school's state approval to operate until the time a new state agency able to provide approvals is in operation, these California proprietary schools are not eligible for federal financial aid, nor are they eligible to apply for recertification by the DOE.

Under what regulations or procedures would the California proprietary schools get recertified for Title IV funds, after there was a new state approval at some point in the future? What rules would apply? There seems to be no regulations that fit this situation but the regulations that covered initial applications seem to be the most applicable. **Under these regulations the**

California proprietary schools would not be eligible for federal financial aid again until the schools new state approval had been in effect for two continuous years.

Specifically 34 CFR section (b)(2) provides that the Secretary will consider that a (proprietary) school has been in existence for two years only if: **“the institution has been legally authorized to provide**, and has provided a continuous educational program to prepare students for gainful employment in a recognized occupation during the 24 months preceding the date of its eligibility application.”

The proprietary schools in California do not meet this requirement, to reestablish federal eligibility which requires that they be legally authorized by the state for the previous two year if their legal authorization has expired. There is an interruption in the state’s authorization from the date the approval to operate expired and the school obtained a new approval to operate from the state oversight agency.

34 CFR Section 600.40 provides that an institution, or a location **or educational program of an institution loses its eligibility for federal financial aid on the date** that: (1) the institution location or educational program fails to meet any of the eligibility requirements of this part. For proprietary schools in California this would be when the approval to operate, which are usually for a five year period, expired. Additionally subsection **(d) provides that the institution must notify the Secretary within thirty days of the date that it fails to meet the eligibility standards** and subsection (d)(2) further provides that the institution **“becomes ineligible to continue to participate in any HEA program as of the date is ceases to satisfy any of the requirements.”** (emphasis added.) Regulations should require schools to show that they were complying with state law when the approval to operate expired. In California that would require that schools show that they were in compliance with California law as of 6/30/07, or the year thereafter if the school signed a voluntary agreement to comply with the expired California law.

Therefore, according to existing regulations, proprietary schools were required to inform the Secretary when their approvals to operate, issued by the former state agency, expired. The Secretary should initiate termination proceeding if he believes the institution no longer meets the required eligibility criteria. The schools covered by the former Postsecondary Act in California should be required to inform the Secretary as required by current regulations when their approval to operate in California expires. That is what should be required of all the schools covered by the Postsecondary Act in California whose approval to operate has expired or will soon expire

There should be regulations added to this section providing specific penalties for institutions who fail to give timely notification to the Secretary of their ineligibility to receive federal financial aid. Regulations should be enacted giving the Secretary the option of ordering the schools to return any federal financial aid received after the school’s state approval had expired. Such schools should not be able to rely on their political connections to have existing federal law ignored when current federal law requires the termination of the school’s Title IV aid. The Department should impose penalties, such as required interruptions in access to federal financial aid, when institutions no longer eligible continue to receive

financial aid. There needs to be consequences for such wrongful conduct. The schools in California were able to get rid of all the statutory student protections in California because any bill with significant student protections have been vetoed by the Governor. (See Exhibit B: article detailing part of the history of trade school law in California).

The proprietary schools should not be able to benefit from their wrongful conduct by continuing to receive federal financial aid when they are not entitled to do so. The proprietary schools used their access to financial aid in the absence of state approval to wipe out all student protections in California. If the schools did not have access to financial aid absent being legally authorized by the state, the Governor could not have risked, at the schools urging, vetoing either AB 2810 which would have continued the Postsecondary Act or SB 483 of last year which would have continuing some student protection.

E. 34 C.F.R. 688.15 – factors of financial responsibility should include an increased asset to debt ratio of 1.25:1 and include further regulation on the certification and recertification process.

The current rules for for-profit institutions only require a 1:1 asset-to-debt ratio. This means the school is only required to have assets that equal its debt. The financial ratio should be at least 1.25:1 and there should be the additional requirement that the school have 30 days of operating expenses on hand. We have seen that schools close after being placed on reimbursement because the school must have all the tuition money up front to continue to operate and pay its bills. If the 1:1 ratio is actually explicit in a statute, then there needs to be a legislative change.

Also, we have frequently seen schools with no assets and only rented materials go out of business and file bankruptcy, thus leaving the students footing the bill. Often the quality of instruction declines well before the actual closing date. And even if the DOE finds violations and closes the institution down, little effort is spent going after the owners of the school who stripped the school of all its assets before it closed. The students that were ripped off by the school often cannot repay the student loans because they did not get the education that was promised and did not get the job to which the training was represented to lead. Even if the former students have a class action judgment saying they were falsely certified, the DOE will not honor the judgment and discharge the loans. So there should be some effort made, by statute or otherwise, to ensure that all the collection efforts are reserved only for the defaulting students.

The Inspector General has repeatedly recommended that the DOE strengthen the certification and recertification process. Further regulations should require the recertification process to focus on high risk institutions that have deficiencies with respect to financial responsibility and administrative capability of the institutions [Bloom Gate-Keeping Report, page 17]. The Inspector General thought the focus, regarding the administrative capability and financial review, should be aimed at non-degree vocational schools. I would add to that the applied associates' degree programs as well.

Over many years, I have seen the results of the Department's failure to perform the gate-keeping function. Currently, I have many clients in their sixties and seventies that are having

their meager social security retirement checks garnished to pay down their student loan debt even though the DOE knows the school was fraudulent. Nevertheless, the DOE ends up going after the students; in my opinion, a significant factor in this result is that the students do not have the resources to hire lawyers while the fraudulent schools tend to be well-represented. But often the DOE gets little from these former students while the student's life is being turned upside down. Also, the total owing on the loans rarely decreases because money taken by garnishment or offset is usually only enough to pay the collection fees, and thus the principal and interest total are rarely reduced. In fact these people qualify for a hardship exemption but they do not know to apply. But if the financial standards were changed by law or regulation, there would be a chance that some of the money can be recovered from the fraudulent school rather than just the defrauded students. Further, hopefully margin schools would not be certified to receive financial aid.

F. 34 C.F.R. 685.213 – there should be a detailed definition of what would satisfy exceptional circumstances justifying a closed school discharge and regulations should be added to aid students in understanding and proving exceptional circumstances.

Under 34 C.F.R. Section 685.213, to qualify for a closed school discharge, absent exceptional circumstances, the student must have been enrolled when the school closed or within 90 days before the date of closure. The closure date is the date the school ceases to provide educational instruction **in all programs** offered by the school.

There needs to be a regulation which indicates the type of closures that would qualify under the **exceptional circumstances requirement** and thus would allow students who were attending the school more than 90 days prior to the closure of the entire school to discharge their loans. **Exceptional circumstances** discharges would include those instances when a course of instruction in which the student was enrolled ceased more than 90 days before the entire school closed. This would include the situation when the course that the student was enrolled in was closed because it lost a required certification from agencies like the Department of Health Services and only this class, as opposed to the entire school, was closed. Further regulations should indicate the factors to be considered in determining whether exceptional circumstances exist for discharge.

Also, the regulations should be expanded to require the closed school discharge application to elicit information which would show that exceptional circumstances applied. In cases where a closed school discharge is denied, the decision should include information about the circumstances in which exceptional circumstances would apply. Currently, the students' claims are denied when the course closed more than 90 days before the entire school. But the student would have no way of knowing of the exceptional circumstances exception to the 90 day rule. There is no information, as to the exception to the rule, on the application form or in the denial decision. That has to change and the regulations should require this result.

Also, implementing regulations should require that information regarding closed school discharges should be kept electronically school by school and campus by campus with the claimed date of school closure indicated in the discharge applications. In this manner, wrong

closure dates could be corrected and exceptional circumstances cases could be spotted and more information obtained from the former student.

G. Regulations should mandate that decisions denying requests for disability discharge should include the reasons for the denial.

Disability discharge regulations should be changed to **require that decisions denying a disability discharge request include the reason(s) for the denial, and that decision along with its reasons should be available to the applicant.** This is required by the Federal Constitution and United States Supreme Court case law; however, the DOE refuses to provide a denial decision in disability discharge applications that meet the requirements of due process of law. Department lawyers should be involved. One gets a detailed decision explaining a granted or denied temporary hardship exemption from garnishment (for a six month period) but the denial of disability discharge provides no reason for a denial.

Also, an applicant has to be “disabled” in order to obtain a disability discharge. The definition of “disability” in the statute provides that the debtor must show that he or she cannot “engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that is expected to **result in death, has lasted for a continuous period of not less than 60 months or can be expected to last for a continuous period of not less than 60 continuous months.**” **The definition of “disability” used for loan discharge is the same as that used for Social Security disability or SSI determinations based on disability.**

Except for one small and one large difference, the definition for Social Security and disability discharge are the same. For Social Security, the gainful activity has to exist in significant number in the national economy. This minor difference could be added by regulation to the definition of the meaning of “substantial gainful employment” for purposes of loan discharge.

This would not create any loophole. To qualify for Social Security disability an applicant must be disabled to the extent that he or she cannot do any job which exists in significant numbers in the United States. This means that if there is only one type of job the claimant can do and there are 10,000 such jobs (even if they are filled) in a few states on the east coast, the applicant will be deemed to not be disabled even if he or she lives on the west coast. Thus, this standard is very stringent.

Therefore, given the almost identical definition of disability for Social Security and the discharge of student loans, the fact that **someone is determined eligible for SSI or Social Security based on disability should be conclusive proof that the debtor is disabled for purposes of a disability student loan discharge.**

But even though someone is considered disabled for purposes of disability under Social Security standards, the debtor still must meet the 60-continuous-months-durational-requirement to discharge a student loan. Social Security deems a person “disabled” if he or she is disabled for a year or his disability is expected to last at least a year. The loan discharge standard requires that the applicant’s disability have lasted 60 months or is

expected to last 60 months. This durational requirement for a loan discharge is five times the length of "disability" for Social Security purposes.

The fact that the durational requirement is much longer for the loan discharge does not preclude the DOE from using the Social Security determination as conclusive proof of disability. The Social Security decision can be relied on to prove that the person is disabled, but this does not mean that he or she qualifies for a discharge unless his disability has lasted 60 months or is expected to last 60 months. The DOE should not be in the business of determining disability when there is another federal agency that has the mission of doing so.

So the regulations should provide that eligibility for SSI and Social Security disability is conclusive evidence of disability. (The same could possibly be done regarding a veteran determination of disability, railroad disability, and black lung disability which use the Social Security definition of disability.) But once the determination was made regarding disability, the DOE would have to see if the durational requirement was met.

Also the regulations should provide that the Social Security beginning date of disability/eligibility shall be used to mark the beginning point to begin the running of the 60 month required period of disability. Such information could be obtained from Social Security.

Further, the beginning date for the 60 month period could be obtained from the claimant's award letter from Social Security. The beginning date of SSI benefit eligibility would start the running of the 60 month durational requirement for a loan discharge. For Social Security disability, the 60 month durational period starts to run five months before the beginning date of eligibility for Social Security benefits because there is a five month waiting period. This requirement provides that the person must be disabled five months before aid begins.

New regulations should allow the DOE to rely on Social Security documents as to the beginning date of eligibility which starts the running of the 60 day disability period. Further, while the debtor is waiting for the expiration of the 60 month period, regulations should provide that he or she should be exempt from debt collection if his or her income is less than the amount required to live in the applicant's city for his or her family size per the IRS standards which are used to obtain hardship exemptions from garnishment.

H. 34 C.F.R. 685.214 – there should be additional regulations relating to false certification discharge.

The relevant regulation requires that the Secretary review the applicant's request for discharge and sworn statement **"in light of information available from the Secretary's records and from other sources including the guaranty agencies, state authorities and cognizant accrediting associations."** There must be additional regulations specifying that the state oversight agency, and the others mentioned in the regulations, must report to the Secretary any violation with respect to ATB testing or ATB students.

Further, additional regulations should specify what types of evidence are included within the definition of the "Secretary's records". For example, the content of other false

certification claims filed by other individuals against the same school must be included in the definition of the "Secretary's records." The content of other false certification claims which support the applicant's version of the facts must be considered as corroborating evidence regarding subsequently filed false certification claims.

Further regulations should be implemented which require an electronic storage and retrieval system to be available to decision makers in such cases. **This electronic system would contain a summary of the content of previously filed false certification claims regarding the factors that would lead to the approval of the false certification claim.** Factors regarding individual claims would include: 1) whether an ATB test was given at all to those who did not have a high school diploma or a GED; 2) giving an untimed test when the test maker said it should be timed; 3) not having an independent test monitor during test taking; 4) not adopting an appropriate cut-off score; 5) only giving the prospective student the math portion of the test because the prospective student did not speak English; 6) assisting the prospective students with the answers to the tests; 7) not following the test makers instruction for giving the test; and 8) allowing multiple retesting.

Currently, the DOE appears to treat each false certification discharge request independently rather than utilizing or comparing the request to information derived from other claims against the same school or similar situations. If the DOE did not do an investigation regarding the school and find ATB fraud, the false certification may be denied despite the fact there may be 50 previous discharge applications submitted with a sworn statement, as required by regulation, which rightfully should be considered as corroborating evidence for each of the subsequent false certification discharge applications.

The same rules should apply for refund discharges. By keeping information school by school, the first claims will be evidence with respect to all subsequent refund discharge claims.

Reasons for discharge must be included in the decision. The discharge denial decision must explain the reasons for denial of a false certification discharge. It cannot just repeat the wording of the regulations. The reason for the denial is required by the U.S. Constitution. But the only adequate decisions provided by the DOE are those relating to the granting or denial of hardship requests regarding garnishments. The garnishment notice is deficient because it does not list all the common defenses to garnishment.

I. Standards should be set to indicate when a Compromise is appropriate and will be approved by the Department of Education.

The relevant statute provides no elaboration. The regulations are not helpful because they provide only one instance where a Compromise is appropriate. There is not a list of factors to be considered in determining when a Compromise is appropriate absent those conditions. The only pertinent regulation provides that a Compromise is allowed when 90% of the amount owing has been paid. It is very rare that an individual has the resources to pay off 90% but becomes unable to provide the remaining 10%; thus, presently, Compromises are infrequently granted. There are no regulations indicating what other instances or what factors should be considered when determining whether a Compromise is appropriate. There needs to be standards set forth in regulations to indicate in what types of cases compromising a

claim would be appropriate. The regulations require that the guaranty agency get a Compromise plan approved by DOE. Since none have been approved, as of the last time I checked the Ed Fund website in California, no Compromise will be granted. The DOE can grant a Compromise but I imagine few try because there are no standards.

I have gotten several students' loans discharged in very egregious fact situations. But Mr. Robinson from the regional office has retired and now the current person said he was inclined to deny everything but said to go ahead and submit them. I have made submissions but have not received any responses in over 2 years even though I updated the applications. I have made up my own standards regarding which situations a Compromise request seems appropriate. During Mr. Robinson's tenure, I received a Compromise in the following situation: 1) the student went to a notoriously bad school; 2) had been indigent for 20 years; 3) was a recovering poly-substance abuser; 4) was in a 12 step program; and 5) had only a minimum wage job which was recently acquired. It makes no sense to pursue loans from former students who are indigent, have been indigent for the last 10 years, or are disabled and indigent (which can be proved by the fact they are on SSI and are receiving no share of medicals costs due to Medi-cal payments).

EXAMPLE ONE

New regulations should allow for a Compromise when the situation regarding the school is extremely bad (with proof such as a lawsuit, DOE investigation, etc...) and the applicant does not likely have the ability to repay the loans and/or is disabled or elderly. For example, I am seeking a Compromise for a student who attended Phillips Junior College (which was one of the worst schools I have seen) for a paralegal course which the school claimed was ABA certified. Other students in the same paralegal course, at the same campus, got a judgment of \$10 million dollars against the school; however, the judgment was not collected. There were newspaper articles documenting the fraud of this school in other states, as well as, additional lawsuits. Also, an assistant secretary of DOE went to work for the school when it was at a terminal stage of its existence. A criminal investigation was started by DOE three times but the school apparently had clout and the lawsuits were dropped.

EXAMPLE TWO

I have other former students that were ripped off by the California Institute, another one of the worst schools ever. The Inspector General prosecuted the owner of the school and my victims provided information for his prosecution. The owner was criminally convicted for money laundering and all his property was seized by DOE. The DOE suspended collection on the student loans when they were getting information to prosecute the owner but then pursued the collection of all the loans from the victims who were defrauded after the owner was convicted. This was confirmed by state and federal reports.

The state additionally documented that the school had over 10 million dollars in unpaid refunds. The school recruited students at homeless shelters, rehabilitation centers, methadone clinics, group homes for the developmentally disabled, and missions. The prospective students were promised transportation to school and \$100 a week from the students' financial aid. The \$100 stopped as soon as the school got the loan disbursement checks.

EXAMPLE THREE

For example, I have former students who attended a fraudulent school which was supposed to teach students to become postal clerks. A federal investigation report indicated that the school committed criminal fraud. My client was a high school graduate so he could not get a false certification discharge. My client cannot repay the loans or make payments and I have already filed two hardship motions for him to stop a garnishment. But the Department should not have allowed the school to qualify for federal financial aid and should have acted promptly when it got a whiff of scandal. Regulations need to ensure that such schools not be certified for federal financial aid (See Exhibit E: Bloom, Gatekeeping Report).

The compromise provision also needs regulations that could be used to discharge multiple loans for a group of people when the attorney general or the like proves that the students were defrauded or falsely certified. The DOE has refused on multiple occasions to use the Compromise section for those that were part of a class action or unfair business practices case particularly even when all the plaintiffs are indigent (this assumes the school goes bankrupt).

J. There should be a detailed description of what satisfies the high school diploma/GED requirement and regulations should take into account that high school degrees from foreign countries may not reliably indicate a student's ability to benefit.

Current law requires that absent the taking and passing of an ATB test, a prospective student must have a high school diploma before enrolling in the course or must have a GED before the conclusion of the course of instruction. What qualifies as a high school diploma should be more particularly described (please see Exhibit F: newspaper articles about high school diploma fraud). There was a scandal in Los Angeles regarding a company that was running programs that was charging students to obtain a high school diploma. A school's high school diploma should not fall within the definition unless the school has been explicitly accredited to provide such diplomas. The regulations need to be written to give no recognition to internet high school diplomas by schools that are not authorized or accredited to provide such courses.

Also, a student is precluded from obtaining a false certification discharge if he has a high school diploma from another country. **Such foreign diplomas should not be counted as a high school diploma for purposes of determining whether the prospective student has to take an ability-to-benefit test.** While a high school education in Mexico is probably of a comparable level to one in the U.S., **it is not an adequate indicator of the prospective student's readiness for post-secondary education at a proprietary school if the student is not proficient in English and the course of instruction is taught in English.** Prospective students with a high school diploma from a foreign country are even more in need of an ATB test or English comprehension test to evaluate whether the prospective student has sufficient English language ability to benefit from the course of instruction.¹

¹ California law, which unfortunately has expired, provided that foreign born students could not be enrolled in a vocational course of instruction conducted in English unless he or she had at least a 6 grade English language comprehension and in some cases higher. The proprietary schools filed two suits to invalidate the law but they

These students could be provided some protection, from being ripped off, if a high school degree from a foreign country did not exempt students from having to take and pass an ATB or English proficient test prior to being enrolled in vocational instruction at a proprietary school. So regulations should provide that a high school diploma from a foreign country does not exempt such students from taking and passing the ability to benefit best or an English proficiency test. Such students, who do not understand the instruction in English, will be less likely to obtain jobs and will be more likely to default on their student loans.

K. Current regulations undermine the ban on incentive compensation and new regulations should be promulgated that instead assist the Department's enforcement of the ban.

Congress enacted the ban on commissions, bonuses, and other incentive payments in 20 U.S.C. section 1094(a)(2) in 1992 in response to the host of abuses documented in the Nunn Report which particularly related to for-profit trade schools. [See Report of the U.S. Senate permanent Subcommittee on Investigations of the Committee of Government Affairs, "Abuses in Federal Student Aid programs, May 17, 1991, hereafter Nunn Report]

Unfortunately, the regulations enacted by the Department were heavily influenced by trade school lobbyists (in and outside the Department of Education). The regulations that were adopted did violence to the intent of the incentive-compensation-ban and they were enacted after the time had lapsed for the adoptions of regulations based on the 1992 incentive compensation ban.

A provision particularly indicative of the adopted regulations that are inconsistent with the enabling statute is 34 CFR section 668.14 (b)(22)(ii)(A). This regulation unwisely exempted from the coverage of the incentive compensation ban changes in admissions representatives salaries as long as there were no more than two increases or decreases of salary in a year and the salary was not based **solely** on the number of students recruited.

A similarly bad provision, 34 CFR section 668.14 (b) (22)(E), specifically exempts from the incentive-compensation-ban compensation based on the number of students recruited to the school who completed the course of instruction. The whole set of regulations is not only at odds with the purpose of the ban but it also undermines and undercuts the ban's very purpose. These regulations should be revisited and those that are not consistent with the statute should be eliminated. Further new regulations should be promulgated that can assist the Department in finding and prosecuting schools that violate the incentive-compensation-ban.

Incentive compensation is but one of the leading contributors to trade school fraud. I have a host of additional suggestions for regulations but I have run out of time.

lost both cases. Prior to the enactment of this provision, which was added to the Maxine Waters School Reform and Student Protection Act in the middle 90's, we had examples of most of the major immigrant groups being ripped off: Spanish, Korean, Chinese, Vietnamese, etc... All were enrolled in English language vocational instruction despite the fact they did not speak English. The addition of this provision stopped the fraud against immigrants but without the law, it will start all over again

Supporting Documents
(Attachments)

EXHIBIT A

Testimony of the Honorable Maxine Waters (CA-35)
Member of Congress
House of Representatives

U.S. House of Representatives
Committee on Education and the Workforce

Full Committee Hearing on
"Enforcement of Federal Anti-Fraud Laws in For-Profit Education"

March 1, 2005

MY INTEREST IN PROPRIETARY TRADE SCHOOLS

I want to speak to you about the necessity of keeping current student protections in federal law, and insisting the Department enforce current law. A host of new protections are needed, but that is for another day.

The for-profit trade schools, or rather, the students they enroll, have been a matter of deep concern for me for more than twenty years. These proprietary schools talk in terms of providing minorities with opportunities, and cloth themselves with terms of the civil rights struggle.

I take umbrage when these tactics are employed by the for-profit trade schools. African – Americans and Latino's, since the era of reconstruction, and the arrival of Cortez, respectively, have been offered these same deceptive opportunities. These schools are continually harming my community.

I have always supported job programs and job preparedness programs in my district. I often go to graduation ceremonies or completion celebrations to provide support for the efforts of young people who were looking for a chance at a better life and employment training.

I had GED courses conducted in my office so that my constituents could pass the math portion of the GED to get into the construction training programs. The 17-30 program in my district got former gang members back into a school or a training program. I have spoken at graduation ceremonies many times at the Maxine Waters Employment Preparation Center, part of LA Unified Adult Education Program.

And with respect to all these groups of young people and all these events, there was one thing in common -- most of the participants had been ripped off by a for-profit trade school.

Many of these students had families, and could not pursue further education or training because they had defaulted on previous student loans used to attend a trade school, and

thus did not qualify for any current financial aid (including Pell Grants), which they needed to support themselves while attending Community College to obtain training.

At one graduate ceremony at the Employment Preparation Center, I asked how many of the graduates had been ripped off by a trade school, and all hands but one went up. I do not want this pattern to extend into the indefinite future.

Removing the 90/10 protection will have severe consequences in my district. The provisions of HR 507 easing the restrictions on distance learning, and including proprietary institutions within the definition of "an institution of higher education" must be rejected. It is time we thought about the students, not just the school's bottom line. These schools had a gross default rate of 44.6% for the period 2000-2002.

NO STATUTE OF LIMITATIONS

In this country, there is no statute of limitations for murder, and for the collections of student loans from defaulting students. When these students are suffering under a crushing student debt burden, because the promised jobs were nowhere to be found, they learn that these loans cannot be discharged in bankruptcy (as one of the victims on the Sixty Minutes program suggested as her only option).

So, the government has insulated itself from the consequences of these schools' deception, and the disastrous consequences. Don't these ripped-off students deserve some consideration and protection?

The reason that I am so strongly support the 90/10 rule, formerly 85/15 (which should actually have a larger number at the bottom), is because I think my constituents and other low income persons and minorities are ill served by the for-profit trade schools and need even more protection from the false sales pitches of many of these for-profit trade schools.

I am not saying that all the for-profit trade schools are bad, but enough of them are, to necessitate the need for student protections. Before my office burned down, I had a pile of trade school complaints two feet thick, and nothing has changed.

RATIONALE FOR THE 90/10 RULE

The 90/10 rule, previously 85/15, was passed to combat rampant fraud, misrepresentations, and exploitative practices in the for-profit vocational education industry. Those practices continue.

Keeping the 90/10 rule or increasing the denominator would give schools the incentive to raise the quality of the education to attract a broad range of students, instead of tailoring the education to the amount of federal funds available to the poorest students.

Eliminating the 90/10 rule would allow problem for-profit trade schools to more easily continue to deceive and mislead low income students (often minorities) at a time when there are few other safeguards.

The 1997 GAO report titled, "Poorer Students Outcomes at Schools that Rely More on Federal Student Aid," provides support for the 90/10 rule. The rationale behind the 85/15 or the 90/10 rule is that schools providing a quality education should be able to attract a reasonable percentage of their revenue from sources other than title IV funds.

According to Mr. Moore, CEO of Corinthian, in his testimony before this committee last year, if the rule is eliminated, his schools will be able to offer greater access to low income and minority students. But this is already the case. Ninety percent of revenue per campus can come from such students.

The GAO report even suggested limiting the amount of title IV funds available to 55% of revenue, because it would save an estimated 11 million dollars in default claims annually.

The current rule generously requires that only 10% of a school's services be pitched to and obtained from groups which have some non-title IV funds to pay for tuition. Why do these schools object? Is it that other groups not so heavily dependent on financial aid are more discerning consumers?

By limiting the percentage of federal funds available to each trade school campus, the expectation is that the overall quality of education will improve because the school would have to recruit more well-off students who would have to pay for at least part of the program from other sources, such as their own savings.

ENFORCEMENT OF 90/10

Despite the harshness alleged by schools of the 90/10 rule, only four schools have ever been shut down by it. I assume this is because the rule is enforced by self-reporting of the schools. I believe this is a mistake.

Further, if only four schools have ever faced a problem with 90/10, why is this industry so vehemently fighting to eliminate it? Have these schools thus far deceived the Department with respect to their sources of funding, because of lack of oversight by the Department and the Department's reliance on self-reporting?

The OIG has postulated that indiscernible or unreported data may indicate probable violations of the 90/10 rule. Because of the inherent flaw in relying on a self-reporting system, it is likely there are some schools in violation of the 90/10 rule that we do not know about. Again, if only 4 schools were truly in violation this would be a non-issue.

By way of example, ██████████ of Corinthian at last year's hearing provided funding information regarding two entirely different campuses which had funding near the 90%

limit. It would be interesting to know how these same campuses survived the 85/15 rule, unless both are new campuses.

██████████ compared these with suburban campuses which had more non-title IV funding. But nothing indicates that the student outcomes at the two campuses (inner-city v. suburban) were comparable, or that the completion / placement rates at either were good. So why should access to intercity students be encouraged?

No information was provided by ██████████ about the starting salary earned by these students. I am not interested in having low income minority students go into debt and get no job or a low paying job. But even these statistics re starting salaries are suspect, because they are self-reported.

A report done by the OIG indicated that self-reported placements by accrediting agencies were not reliable, as most of the schools in the sample inflated the placement rate, and often by a huge component. Only two of the seven provided accurate data. None of the additional schools that were evaluated correctly reported its placement rate.

How close proprietary schools are near to the 90%, or how many are likely to be over, it is not known. It is a very bad idea to eliminate a rule that if enforced may have a salutary effect on the education which students receive at proprietary schools, or which may decrease the number of ripped-off students.

I hope the committee is not fooled by the contention that fraud and violations of the law no longer exist. I know this not to be the case.

THERE IS NO POINT TO INCREASE PROPRIETARY SCHOOL ACCESS TO INNER-CITY STUDENTS WHEN DECENT PAYING JOBS DO NOT RESULT

Further, what point is there in allowing these schools more access to low-income / minority students, if the students do not get decent paying jobs. For the two-year degrees, only 20% or less, up to 40% of students, complete the course in the schools that I have seen data for. Of those who complete, they often find only low paying jobs. Some of these fields of study, like cosmetology and fashion, have more job applicants than jobs.

I do not want these students to pay \$30,000 - \$50,000 for a fashion course of study and end up folding t-shirts at The Gap, as disclosed on the Sixty Minutes segment, when that woman could have gotten the same job with no vocational training.

Further, Tami Hanson, former Director of Placement for Career Education Corporation (hereinafter CEC) said that the cost could be even more, as much as \$60,000 to \$80,000.

The letters I have received since the Sixty Minutes story reinforce why I believe it is essential to maintain the 90/10 rule, and even increase the ratio. These comments from one such letter relate to American Intercontinental University, a sister school of Brooks College in Long Beach, featured in the Sixty Minutes story:

"We have been raising issue with these questionable practices ever since CEC bought AIU three years ago. We saw the demographics shift to primarily low income, D average (and below) students who were ill prepared to commit to the structure, rigors and requirements of a design college. They were taking out huge federal loans to pay for their tuition, and then because they had no funds for supplies, transportation, or even food, would fail.

I have a DEEP SEATED moral problem with targeting these students, getting hold of their financial aid monies, and lying to them in a variety of ways (i.e. they will be able to get a B.A. degree in two years, they will be able to get a job with JayLo designing, they will be able to get a job with Spielberg and the list goes on and on). As stated above, the majority of these students recruited are not ready for a college, especially one that will land them \$60,000 to \$80,000 in debt IF they finish, which the majority does not. They have no discipline to come to class, to do the work required for completion of the course and we flunk a large number of these applicants. But that's ok to the Administration. They allow them to withdraw or take a leave, they collect their financial aid and let them back in after a quarter off. ___ ... a student who had flunked EIGHT QUARTERS (that is 3 classes each quarter at a minimum of \$1800 per class for a total of \$43,200.). He was re-admitted last year only to continue his poor academic standards, flunking or withdrawing from his classes!!!!!! This is not unusual... The faculty hold these students to standards that are in keeping with college level classes, even though we are repeatedly pressured by the Administration to "work with them" meaning "pass" them through so they do not drop out and we can no longer get their federal money!

... It is because of this accreditation (and I use the word loosely here) that AIU is eligible for these hefty federal monies. It is just so morally wrong, as you know. These students DO NOT need to be going to a private \$60,000 to \$80,000 college when the Community Colleges were founded for EXACTLY this purpose. I have gone down on my knees (literally!) and begged some of my at-risk students to drop the first week because I can TELL they will fail (they don't show up at all the first day and come with no supplies or do not have money for supplies the second day and they don't really even know WHEN they will have money for them!). They usually fail and I am forced to give them that grade."

(emphasis in the original)

Other letters about the same school (two others) or different campuses and schools, such as the Art Institute, an Education Management Corporation school, had the same complaints:

unqualified students were admitted

misrepresentations were made to get students to enroll, re:

- o starting salary
- o prestigious employers
- o etc.

And the completion rates were low.

It would be ill advised to get rid of 90/10, so that schools can rip off more disadvantaged and ill prepared students. Often the poor completion rates are not disclosed, and if known and understood should influence low income students not to sign up.

LOW COMPLETION RATE / LOW STARTING SALARIES AT BROOKS COLLEGE

A case in point is the Long Beach campus of Brooks College, owned by CEC. The college "claims" a high placement rate for its graduates with the school's assistance if we are to believe the school's self-reporting. But the school's accreditor, the Western Association of Colleges and Universities provides in the summary of its evaluation report as follows:

"The claims must be viewed in light of the fact that only about 35% of Brooks' students ever finish the program and that another 10% of those who do complete or graduate are waived from placement...

The quality of job placements is another important indicator of college program integrity. The college claims in its catalog, for example, that graduation from the Interior Design program "automatically puts you in the elite group of well educated interior design professionals" and that "as a Fashion Merchandiser [graduate] from Brooks College, you'll be prepared to handle some of the most competitive and serious business management and executive training positions in fashion capitals around the country." Within such statements, there is an implied representation of program quality, market competitiveness of graduates, and availability of career opportunities. However, college data show that the average starting salary way for Interior Design graduates is \$11.67 per hour and for fashion merchandising graduates is barely above minimum wage. The most common job title for fashion merchandising graduates is sales associate. The average starting wage for graduates and completers in all programs majors is less that \$11.00 per hour. (2.1, 2.9)"

(emphasis added)

At the Katherine Gibb School, the Sixty Minutes producer asked the completion rate, and was told that it was 89%, when it was actually 29% (a 60% error).

I do not want these opportunities for low income and minority people. I do not want them to pay off a \$40,000 loan working as a sales associate at Macy's. Neither should you. These are businesses, looking for bodies to sign up for federal money that they put in their pockets.

LOW INCOME STUDENTS GET FAR MORE GRIEF THAN HELP FROM PROPRIETARY SCHOOLS

Low income students get far more grief than help from these schools. There may be some success stories but there are far more failures. I have seen the devastation caused by these schools in my community, and the devastation has continued unabated. The only difference in my state is that -- because of state law, and the law regarding ability to benefit students -- such students (non high school graduates) are at least left alone.

But instead, equally poor and often minority high school graduates, who are often ill prepared for higher education, are ripped off for many more tens of thousands of dollars. They are signed up for courses they cannot benefit from, even when the instruction is adequate (which it often is not). Too often, adequate teaching staff is considered an unacceptable overhead expense by the school chain.

MOST OF THE MONEY IS SPENT ON ADVERTISING AND RECRUITER SALARY, NOT FACULTY

In these schools, often the number of admissions representatives or recruiters dwarfs the number of full time faculty. The amounts spent on advertising, lead creation, recruiting, and admissions representatives far exceed the salaries paid to the faculty. If the school got student good jobs, it could rely on word-of-mouth advertising.

LOW ADMISSIONS STANDARDS

The entrance standards at these proprietary trade schools are exceedingly low -- usually a 2.0 grade point average for the two year courses. But as we saw on 60 Minutes and have found time and time again, low performing students and those in need of remedial education are let into these programs, regardless of their grades, which do not even meet the school's mediocre acceptance standard.

██████████ (Associate Producer at Sixty Minutes) could not disqualify herself for admission by low grades, drug addiction, or failing the entrance test. Students are let in regardless of their test scores or failing grades.

As noted by a former recruiter for Brooks College, the only requirements for admission at Brooks College was "\$50.00, a pulse, and you've got to be able to sign your name".

LOW COMPLETION RATES

The school knows full well that such students will never complete the course. They drop out, and sometimes even re-enroll in the same course that he or she failed out of (see the letter from an American Intercontinental Staff Member above).

From the information I have seen regarding the two year school trade school courses, usually only about one third (1/3) of the students actually complete the course. I believe the highest completion rate for any course at the Career Education School, Brooks College in Long Beach, was 38 percent. In 2003, there were 396 graduates and 1,131 drops or withdrawals at Brook College of Photography in Santa Barbara, part of the CEC chain.

EVEN GRADUATES DO NOT GET DECENT PAY

Those who complete the course do not necessarily fare any better, because they have a bigger debt to pay. Many do not get jobs, because there are too many schools teaching the same courses of study, so there are more graduates than there are jobs. This depresses the wage scale.

For example, the numerous students that take medical assisting courses often find no job, or if they do find a job in the Los Angeles area, for the most part the jobs are a minimum wage or a little above, with no benefits and few opportunities for a significant pay raise. This was the case regarding the plaintiffs and witnesses in the case of [REDACTED] (Los Angeles Superior Court Case [REDACTED]).

The students were assured of a job after they graduate, making \$9.00 to \$12.00 an hour, or \$10.00 to \$15.00 an hour. But they got no job or a low paying job, for the most part. Such marginal pay does not justify taking on the burden of student loans, when they could have gotten the same salary without any training. But at least these students were only out \$8,000 to \$10,000.

LOW PAY UPON COMPLETION OF TWO YEAR COURSES

The same is not the case for those who complete two-year trade school courses which lead to an applied degree. The woman on the Sixty Minutes exposé paid for a fashion course at Brooks College in Long Beach, California, then got a job at the Gap folding T-shirts. The cost for the fashion courses can range as high as \$60,000.00. I am sure that is not the job (Gap employee) that she envisioned after the expenditure of so much money for training.

The accrediting agency, Western Association of Colleges and Universities (WASC) did an evaluation of Brooks College in Long Beach (one of the schools featured on Sixty Minutes). This report indicated similarly low starting salaries for students in other two-year courses at the school.

The college data show that the average starting wage "for fashion merchandising graduates is **barely above minimum wage**. The most common job title for fashion merchandising graduates is "Sales Associate" (emphasis added). The average starting wage for graduates and completers in all programs is about \$11.00 per hour. But the admission representatives featured on sixty Minutes indicated that they would be making a starting salary of \$35,000 to \$40,000.

How many of the thousands of students who have attended the Brooks College and its sister College, American Intercontinental University in Culver City offering many of the same courses would have signed up for a course costing \$30,000 to \$50,000 if they knew that only about one third of those who started the course would finish?

And those who completed the course and got jobs could expect between minimum wage and \$11.00? Not many, I suspect. And this is a nation wide chain. For someone of even average intelligence, this is not a rational choice unless s / he is deceived.

The low starting salary after a two year course of instruction in Photography at Brooks College in Santa Barbara was confirmed in the December 1, 2004 report regarding the re-approval of this school done by the state enforcement agency, the Bureau of Private Postsecondary Education (discussed hereinafter as "Bureau"). The Bureau looked at a sample of graduate files.

While the school, Brooks College in Santa Barbara, touted a starting salary ranging from a low of \$34,000 to \$75,000, the student sampling done by the Bureau of Private Postsecondary Education indicated exceeding low starting salaries (to be discussed hereinafter). The best pay of a graduate in the samples was a \$10.50/hour job at a photo lab, which went out of business.

Further, the same report indicted that although the school records showed that the school assisted the student in obtaining the jobs, albeit low paying, in fact, **only one of the students received any help from the school in obtaining employment.**

PLACEMENT SERVICES MISREPRESENTED

A class action law suit was recently filed against Brooks College in Santa Barbara, and another one was filed against American Intercontinental University, another Career Education Corporation (hereafter "CEC") school, alleged that the college's placement services and placement assistance was misrepresentation. From the sampling done by the Bureau at the Santa Barbara campus, that seems to be the case.

Only one student in the Santa Barbara sample received any assistance. The graduates of the Brooks College in Long Beach confirmed that they received no placement assistance.

EASY PREY

I know that what students are promised by these schools is not what they get. Misrepresentations are made about:

- the quality of instruction
- the state of the art equipment and supplies
- the anticipated starting salary
- the transferability of units
- the completion and placement rates
- the student selection process
- placement services
- jobs with prestigious employers
- etc.

My constituents are fooled time and time again, and are the focus of recruitment efforts only because of their access to financial aid. That is why I proposed the 85/15 amendment initially, and why it's watered down sister, 90/10, must be maintained. The protections that HR 507 seeks to eliminate also must be maintained.

These schools look for their recruits the same place the armed services does – in low income neighborhoods among those who are starved of opportunities and want a piece of the American dream.

UNITS DO NOT TRANSFER

None of the units earned at these trade schools are meaningful. They do not transfer to other schools including state schools but the students are not aware of this. They are lead to believe despite the disclaimer in the catalogue that because the school is accredited the units transfer. The admissions representatives feed that misconception.

If they in fact go to another school, even after paying \$50,000 they end up as freshmen again. This misrepresentation is the basis of law suits against Corinthian (a nation-wide chain) in Florida.

PLACEMENT RATE MISREPRESENTED

The biggest misrepresentations made to students that convince them to enroll are anticipated starting salary (discussed above) and the placement rate. But both are often misrepresented. The starting salaries that prospective students are told are seldom true.

Many schools tout a 90% plus placement rate. But these are self reported rates and not necessarily accurate.

The WASC report regarding Brooks College in Long Beach implied that the alleged placement rate may be deceptive because most didn't complete the course, and an additional 10% was excluded from the placement calculation.

The recruiter for Brooks College in Long Beach said:

"We are selling you that you're gonna have a 95% change that you are gonna have a job paying \$35,000 to \$40,000 / year by the time you are done in 18 months", say Shannon. We later found it was not true at all."

In a lawsuit against ITT a San Diego law firm proved at trial that ITT inflated its placement rate. For example, a student who was counter help at Burger King was listed as a placement for the Hotel and Restaurant Management course.

The same law firm, Majors & Fox, in litigation against the Corinthian chain also has depositions showing that the school inflated its placement rate. In two class action lawsuits against two Career Education Corporation schools, Intercontinental University in Culver City and Brooks College in Santa Barbara, the plaintiffs allege that the colleges have inflated or misrepresented the placement rates. Another report in December of 2004 on the latter school by the Bureau (the state enforcement agency) confirmed that the school misrepresented its placements.

In addition, the Council of Private Postsecondary Education, the enforcement agency in California prior to 1998, reported that in a sampling of placement rates from for-profit trade school placement logs, (with respect to every school sampled), the placement rates were misrepresented and inflated.

In an OIG Report regarding accrediting agencies, the IG checked a sampling of placement information from a series of seven schools with three different accrediting agencies.

The IG found that only two schools correctly reported the placement rate and the others had inflated the rate as much as 270 %. Only two out of ten schools that were tested, accurately reported the placement rate.

Even if we assumed placement was accurately reported, which is a big assumption, the accreditors' definition of a placement can be so expansive that a job of a few hours or a day or an unrelated job counts as a placement.

For example the definition of placement can be a job in the field of training or a related field. This could be anything and everything and every school could have 100% placement for paying a third party to hire their graduates for a half a day.

As [REDACTED] former placement director at CEC said, "(A) placement did not necessarily mean getting students the jobs they trained for. As she says a job placement could mean just about almost anything." (emphasis added)

And really should the school be allowed to count as a placement a job which requires no experience or training? This happens all the time.

FRAUD, ABUSE, AND VIOLATION OF THE LAW STILL PERSIST, WITH LITTLE ENFORCEMENT

Sadly, more than a decade after the passage of additional student and financial protections, many of the same problems persist. Yet, the US Department of Education does little or nothing in following upon student complaints. In the recent months, ITT, a nationwide chain of vocational schools, has become the subject of an FBI fraud investigation. Campuses have been raided in six states. Prior to this, the Department let this chain off with a small fine.

The campus of a local chain in the Central Valley of California has also been raided by the FBI. In addition, Career Education Corp., one of the largest for-profit proprietary education chains, has recently had two class actions filed against it, claiming multiple misrepresentations made to students. An investigation has been initiated by the SEC.

These class action lawsuits against CEC schools involve American Intercontinental University in Culver City, and Brooks College in Santa Barbara. Sixty Minutes did an exposé featuring a third CEC campus, Brooks College in Long Beach, and visited a dozen CEC campuses where the same problems existed.

In California, the Department of Education has uncovered violations in obtaining federal loans at Corinthian's Bryman College campus in San Jose, California. There are two ongoing lawsuits by students in Los Angeles against Corinthian, and another two in Florida claiming misrepresentations.

A new lawsuit has been filed by Bryman students in Long Beach (a chain owned by Corinthian) alleging misrepresentations. Further, stockholder suits have been filed against the largest proprietary school chains. But the Department has done nothing to follow up on these claims.

Clearly the statement of [REDACTED] CEO of Corinthian, at the June 16th hearing that, "this problem [abuse and fraud] has been effectively addressed," is far from accurate. In spite of this, industry representatives are asking Congress in current legislation to give these schools unfettered access to Title IV funds.

Members of this committee should reject the provisions of HR 507, which enable for-profit schools greater access to financial aid. Trade schools abuses are an ongoing problem and it is simply being ignored by state and federal regulators. This is what I am distressed about.

Few resources are invested in uncovering and investigation misrepresentation and fraud. The Department does not appropriately follow up, even when others (whether it is uncovered by whistleblowers, student complainants, or attorneys) have uncovered fraud and violations of the law.

ACCREDITING AGENCIES ARE POOR GATEKEEPERS

██████████, CEO of Corinthian, in his testimony before this committee last year, declared that accrediting agency oversight is all that is needed to ensure quality education. But there is little reason for having confidence in accrediting agencies.

An audit by the Office of the Inspector General in July 2003 found multiple deficiencies with respect to the Accrediting Agency Evaluation Unit within the Department of Education's Office of Postsecondary Education. This is the unit with oversight over accrediting agencies, which in turn have oversight over trade schools.

Specifically, the audit found that the Evaluation Unit did not meet the minimum level of quality for management controls as defined in the GAO office publications. **The report reserved the worst criticism for the Unit's oversight of regional and national accrediting agencies which were overseeing trade schools.** The report recommended that no new agencies be approved until protections were in place.

The American Council of Trustees and Alumni (ACTA), in its report titled "Can College Accreditation Live Up to Its Promise" by ██████████ and ██████████ provided as follows:

"Our overall finding is that accreditation does not guarantee educational quality."

"Finding: the accreditation process focuses on compliance, with a set of input criteria that do not bear directly on student learning."

██████████ (Inspector General of the U.S. Department of Education), in testimony before the House Committee on Governmental Reform and Oversight Subcommittee on Human Resources, March 27, 1997, on the topic of "DOE Management and Programmable Issues", stated that the Office of the Inspector General found accrediting agencies' monitoring of trade schools to be inadequate:

"We continue to believe that accrediting agencies are inadequate gatekeepers for assuring the quality of participating vocation trade schools. A recent OIG audit of the accrediting agency process revealed that on-site reviews conducted by six accrediting agencies were infrequent typically occurring only every four to nine years, and lasting only several days."

(emphasis added)

In his testimony before this committee last year, ██████████ implied that the 90/10 rule was no longer necessary because the accrediting agencies would be an adequate check on school quality and fraud.

Accrediting agencies can not make up for the elimination of the 90/10 rule because the accrediting agencies are themselves private companies dependent on the fees paid by the trade schools. They have few employees, given the number of schools they regulate.

In fact, there is a built-in conflict of interest with respect to accrediting agencies, because they have no incentive to revoke accreditation since their income-stream is directly determined by the number of schools they accredit. Even if an agency increased its standards based on the elimination of the 90/10 rule, a school can still shop among several accrediting agencies and choose the one with the lowest standards.

AN EXAMPLE OF AN ACCREDITING AGENCY'S FAILURE TO APPROPRIATELY MONITOR A SCHOOL

A former employee of Brooks contacted the state enforcement agency (BPPVE) and the Accrediting Council for Independent Colleges and Schools (ACICS), the schools' accrediting agency about violation of the law. ACICS did an investigation and found nothing wrong.

The Bureau of Private Postsecondary Education did an investigation in connection with an application for reapproval of the school, but unlike the accreditor, the state enforcement agency found multiple violations:

the catalogue was found wanting

its enrollment agreement was out of compliance

another questionable practice found was that enrollment agreements were signed by the students several months before the actual start date of the educational program.

the school did not make the necessary disclosures regarding completion and placement and the transferability of units as required by California law

the school did not adhere to its stated admissions policy, including the policy that requires a 2.0 high school grade point average for admission.

The state enforcement agency found that the institution is not in compliance with Title 5, CCR section 71770(a) which requires that: "the institution shall not admit any student who is obviously unqualified or who does not appear to have a reasonable prospect of completing the program." (emphasis added)

Further,

"the total number of graduates for 2003 to the date of the visit was 396. The number of drops / withdrawals for the same time period was 1,131."

You do the math. This is exactly the sort of low completion rate information that prospective students need to be informed of, as required under California law (the fact that only about 30 percent of those who start the course graduate).

There are numerous other violations in the report, but the most critical in my mind is the schools' improper inflation of its completion rate by misrepresenting placements which in fact are not placements.

A brochure submitted with the renewal application indicates career "outcomes" listing job titles, the salary range, and the catalogue includes a "partial list of employers" depicting 119 names of corporations and businesses. Of the fifty graduate files reviewed, only three listed the name of the employer and one was the institution itself.

The Bureau was able to contact eleven of the graduates. The report states that "of the eleven, ten of the graduates stated that they had not received job placement from the institution." (emphasis added)

The school referred one graduate to www.monster.com and another to a \$7.00/hour job. The best paid graduate placement on record was a \$10.50/hour job at a photo lab which had since closed. A former student who is attending Chico State University as a student was listed as employed by Chico State.

The report continues: "Five of the graduates are currently unemployed" (five out of eleven). The graduates that were counted as employed included one job at Sunwest Studios at a salary of \$600.00 per month and another is working while enrolled in the Masters program at a local camera shop.

Another graduate who was listed as employed was actually in an unpaid internship. Of those who were employed, all but one got the job on their own. However, "the institution has indicated on the yellow data sheets in the placement files that they have been placed."

The Bureau found that:

"(t)he institutions' advertisement and promotion is false and misleading, as it depicts job titles and salaries that are considerable, particularly when juxtaposed to the small sampling of the graduates."

The lowest salary cited by the school is given as \$34.446 (of which 25% of the graduates in that job title will make less than that salary) and the highest is stated as \$76.573."

Hopefully with the new leadership at the BPPVE and the practices exposed by Sixty Minutes at the Sister Brook College in Long Beach and elsewhere, something will be done about these schools which systemically violate the law.

Because accrediting agencies are dependent on school fees, I strongly believe there is a legitimate need for increasing the 90/10 to require a higher percentage of non-title IV money.

By maintaining and enforcing the 90/10 rule, or ideally raising it, proprietary institutions will hopefully have to recruit students with some income to spend on tuition.

THE TYPE OF STUDENT RIPPED OFF IN MY STATE HAS CHANGED, BUT THE FRAUD / VIOLATIONS CONTINUE

The characteristics of the trade school victim have changed, yet systemic fraud committed by for-profit trade schools has not. In the late 80's and early 90's the ability to benefit students (those who had not graduated from high school and did not have a GED) and limited English speaking students were most likely to be defrauded.

Because of changes in California and federal law, a school with a high default rate for three years can lose financial aid entirely. But subsequent changes in the counting of default percentages have made this less of a threat.

California law prohibits signing up limited English speakers in courses taught in English. Now, these problem schools recruit high school graduates for health certificate programs and "two year" applied degree vocational programs. These students are ripped off for a lot more money, and often find no job, or a low paying job after their training.

The level of damage to these students is far more severe, because of the enormity of the loans they owe, and the fact that their loans cannot be discharged in bankruptcy when the students are unable to pay.

I believe trade schools have begun to focus on high school graduates because they are less problematic, less likely to drop out, and more likely to have the ability to pay back loans or apply for deferments, and keep the schools' cohort default rates down. High school graduates often repay the loans despite the fact they do not get the job that they trained for or if they do, it is at a lower pay than the proprietary school represented.

Many of these students do default, but because of the change in how default rates are counted, when they do default, it is not counted against the school for purposes of the 25% threshold.

Unfortunately, these students lose their dreams in addition to a lot more money in longer and higher priced courses. Now, the loss per student is much more. Further, the most recent data shows that the default rate for proprietary students over the life of the loan is exceedingly high – 44% to 46% for the 2000 to 2002 period.

PROHIBITION AGAINST INCENTIVE COMPENSATION UNDERMINED BY DEPARTMENT

Since the passage of 85/15, trade schools have been pushing not only for its repeal, but the removal of other safeguards imposed to prevent fraud in their financial aid program. 85/15 was reduced to 90/10 in the late 90's.

Trade schools have been successful, with the complicity of the Department of Education, of essentially seriously undermining the federal law passed in the early 90's that prohibited commissioned recruiters or any other types of incentive compensation.

This law recognized that admissions representatives or recruiters are more likely to misrepresent the program, placement statistics, and potential starting salary to get an enrollee to sign up if the recruiter's salary increased with the number of enrollees.

Incentive compensation gives recruiters an incentive to "doctor" financial aid documents to maximize the school's revenue. When Corinthian and Career College Association were unsuccessful in lobbying to change the federal law prohibiting incentive compensation enacted in 1992, the Department granted their wish list regarding this prohibition by adopting the regulations that the trade schools had written over the objections of advocates for students in Negotiated Rulemaking.

The worst provision of the regulations allows trade schools to raise an employee's salary up or down twice a year. Incentive compensation, expressly prohibited by law, was essentially undermined by the regulations drafted by trade schools that were ultimately adopted by the Department.

Thus, the regulations allow a thinly disguised incentive compensation or quota system which violates the spirit and intent of the prohibition and the law. This very modification by regulation may have contributed to the financial aid violations at the San Jose campus of Corinthian (to be discussed below). And these regulations show that the Department is not serious about combating fraud, abuses or violations of the law.

The schools' motivation is more understandable -- they want unhindered access to low income or working class students' financial aid. The most aid is available to the poorest segment of students, who are the least likely to be able to combat any abuses of the school or find allies that can effectively advocate for them.

Unfortunately, the perverse incentives of financial aid cause the excesses of these schools to be visited disproportionately on low income and minority students. This consequence has consistently been the focus of my criticism with respect to trade schools.

LACK OF ENFORCEMENT BY THE DEPARTMENT OF EDUCATION

There are changes which can be made to existing law which would curb much of the abuse in the for-profit sector. This could be accomplished by mandatory completion and

placement requirements, as well as strict liability provisions barring fraud and misrepresentation in the enrollment process. Further, the schools should be required to disclose chapter and verse – the jobs previous graduates obtained, the name of the employer, and their starting salaries.

But there seems to be little point in this, as the Department does little, very little, to enforce existing law. Further, there are Department employees who worked for and lobbied for the interests of the for-profit schools either before or after they worked for the Department, or both.

The Department at times acts more like a trade association for the trade schools than a regulator. The schools have immediate access to the decision makers, and those representing the interests of trade school students are shut out.

STUDENT COMPLAINTS AGAINST CORINTHIAN HAVE NOT BEEN INVESTIGATED

Neither the Department, Regional Office of the Office of Inspector General, nor the Bureau of Private Postsecondary Vocational Education in California (the state enforcement agency), have investigated the complaints of multiple Corinthian students which were sent to them, even though their claims were supported by twenty to thirty declarations made under penalty of perjury from both students and instructors from multiple campuses and courses of the Bryman chain, owned by Corinthian.

One would think, that even an agency seeking to avoid work, would follow up when the initial work was done for them, but that is not the case. It seems that both the executive and legislative branches of the federal government and those in my state are determined to remove the few safeguards currently in place with respect to for-profit proprietary schools, and to not enforce existing law if it would have a negative impact on the schools.

FINANCIAL AID PROBLEM AT CORINTHIAN CAMPUS OF BRYMAN IN SAN JOSE

If middle-class kids were targeted with direct advertising and deceived as often as low income and minority students maybe their complaints would be taken more seriously by regulatory agencies and members of Congress, and the State Legislators.

Now, the interests of the defrauded students, who are mostly low income or working class students in California, are totally ignored by the Department of Education and the Bureau of Private Postsecondary Vocational Education (the state enforcement agency).

The Department has repeatedly ignored the wisdom and recommendations of the Office of the Inspector General regarding trade schools, as well as the fact that accrediting agencies are not appropriate monitors.

The state enforcement agency in California has been continually criticized by student advocates, internal audits, and the Sunset Review Committee. The situation is so bad that a monitor has been put in place by state law. But recently there has been a change of leadership in California.

The Department did act on a lead with respect to Corinthian's Bryman campus in San Jose, California. The number of dependents on students' financial aid applications were inflated to qualify for financial aid or more financial aid.

The admissions representatives were trying to meet their quotas, no doubt. Even though the audit found financial aid violations, there were no dire consequences for Corinthian imposed by the Department.

Further, the results of such audits show the value of the few remaining student and anti-fraud protections, which have also been undermined, specifically the prohibition against commissioned recruiters and incentive compensation.

DEPARTMENT'S INVESTIGATION AND PENALTIES ARE NOT SUFFICIENT

Even when someone of acceptable credentials complains, and financial violations are found, like at the San Jose campus of Corinthian, the investigation is not extended to other campuses of the same chain to see if similar practices and financial violations exist. Rarely, with the exception of Computer Learning Center, do the trade schools face appropriate sanctions when violations are found.

No such consideration by the Department is ever shown for defaulting students who have been ripped off by known fraudulent schools when they cannot pay their student loans. Payment is still enforced out of their disability or relatively low paychecks, even when the Department knows they have been misled -- when they have had the placement rates, starting salaries, and quality of instruction misrepresented to get them to enroll and become obligated to repay tens of thousands of dollars.

Yet the school doing the defrauding may be allowed to pay a few cents on the dollar to settle claims with the Department, or placed on reimbursement status so that they have to wait 45 days for payment of financial aid.

If the school closes, owing the Department money, the corporate officers are not appropriately sanctioned. Then, the same people who served as corporate officers of the closed problem school start new schools and get new financial aid at the new school without any vetting or monitoring of the corporate officers, or restrictions placed on those who previously worked for problem schools which closed.

For example, the current CEO of Career Education Corporation, [REDACTED], was previously Senior Vice President of Phillips Junior College which closed after many audit violations and thwarted criminal investigations. Phillips owes the defrauded students a \$10 million judgment in Los Angeles, as well as many unpaid refunds.

The same history may be found among other chain schools. The corporate officers of the now defunct National Education Center, with a few exceptions, hold the same or similar positions at Corinthian Colleges or Schools. It is this lack of oversight and investigation that I have continually complained about.

Why has the Department not looked into the executives of current schools who held similar positions at prior schools which had multiple audit violations and closed owing a lot of money in unpaid refunds, or was the subject of student complaints?

Why has the Department not looked into the allegations made in class action lawsuits against Corinthian in the lawsuits filed in Florida and the three lawsuits by students in Los Angeles and the one in Long Beach?

Why has the Department not looked into the allegations made in two class actions against Career Education Corporation schools in Los Angeles and Santa Barbara?

Why has the Department not followed up on the allegations made in the Sixty Minutes story about Career Education Corporation, particularly the Long Beach campus which got a bad report from its accrediting agency?

Why has the Department not followed up on allegations made in Matos v. Art Institute, given the significant cost of these programs, the harm likely to befall the students and the school's graduates and the likelihood that if the allegations are true, such irregularities are also happening at some if not all of the other 67 campuses?

Why has the Department not investigated claims made in whistleblower or shareholder lawsuits against ITT, Corinthian, CEC, and the University of Phoenix?

It is certainly worth a look given the tens of millions of federal financial aid dollars going to this school chain.

WHY IS THE DEPARTMENT RELUCTANT TO ENFORCE THE LAW?

Why was the San Jose campus of Corinthian put on reimbursement (a delay in payment of tuition out of financial aid for 45 days after the program starts) instead of being cut from financial aid completely as a result of its financial aid violations?

Why weren't curbs put on financial aid given at other Corinthian campuses?

What information does the Department have that the violations were limited to the one campus?

Why did the University of Phoenix and ITT get off so easily when the Department found incentive compensation violations? (I am encouraged that the Department of Justice has filed a brief in support of the attorneys suing the University of Phoenix.)

So, the consequence of a school, like the Corinthian School, Bryman in San Jose, violating financial aid law, is that it does not get tuition up front, but it still does get the money. Did the Department check to see if misrepresentations were made to these Bryman students, as alleged in the lawsuits by students against Corinthian, or by student complaints with the state enforcement agency? Or did it limit itself to the one issue?

If a minority student (such as those that Corinthian seems so eager to educate according to the testimony of ██████████ at last year's hearing), obtained financial aid in violation of the law, that student would likely be doing hard time in jail.

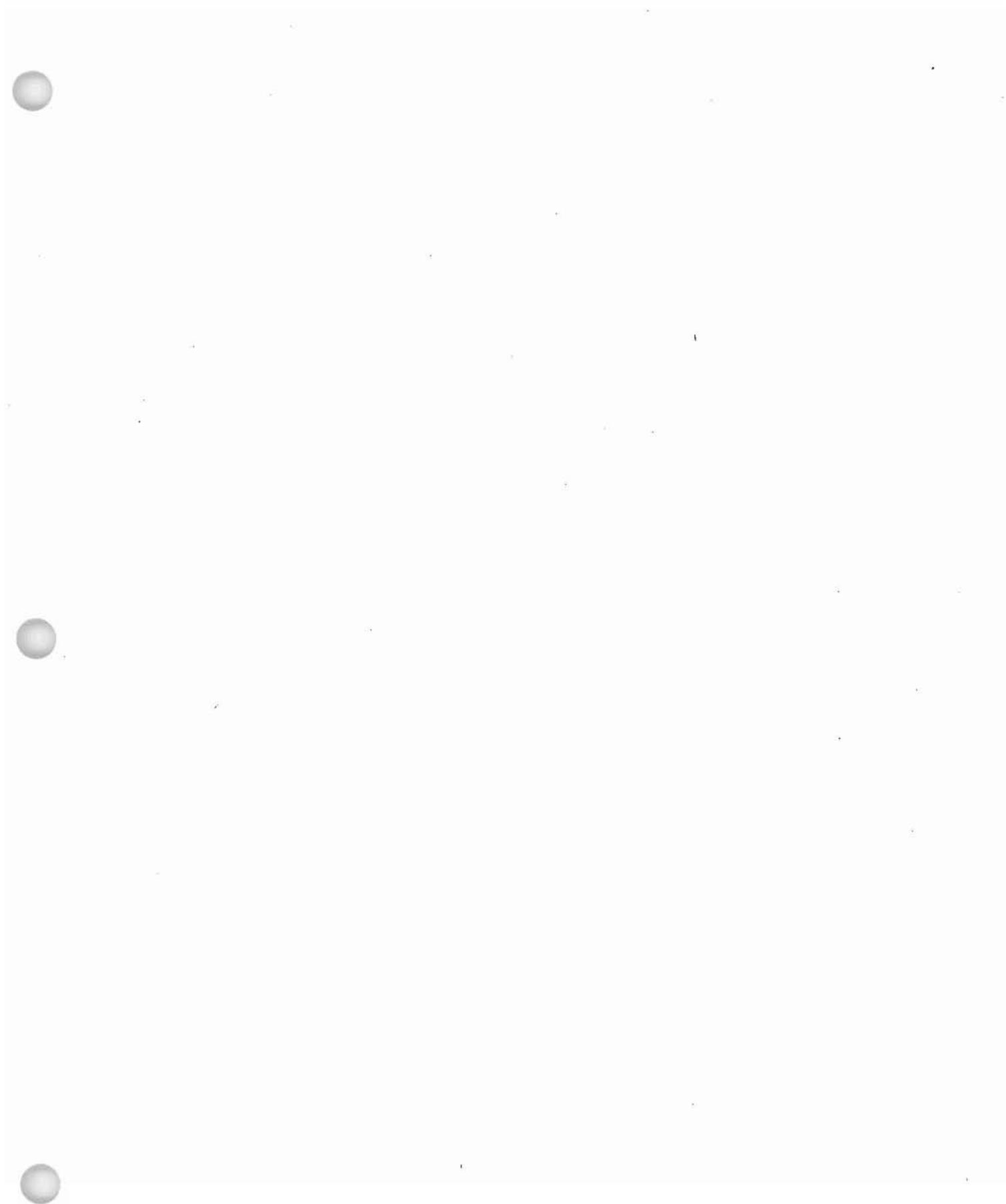
It sends a bad message when violations of financial aid law have so few consequences for a school which is caught, but the consequences experienced by defaulting students are many, and severe. If they default (and many of those students owe \$40,000 to \$50,000 in federal student loans), then their tax refunds and earned income tax refund (meant for the children of the poor), families are taken year after year. Their paychecks and disability checks are garnished.

Their credit is ruined, so that they cannot even get credit to purchase a used car to get to work. They are barred from Section 8 housing and other government benefits. They are barred from getting grants and loans to get a legitimate education. **Pure and simple, these schools ruin young adult's lives, and steal their dreams.** Yet for the most part, the Department refuses to follow up on leads that fraud and violation of the law exist.

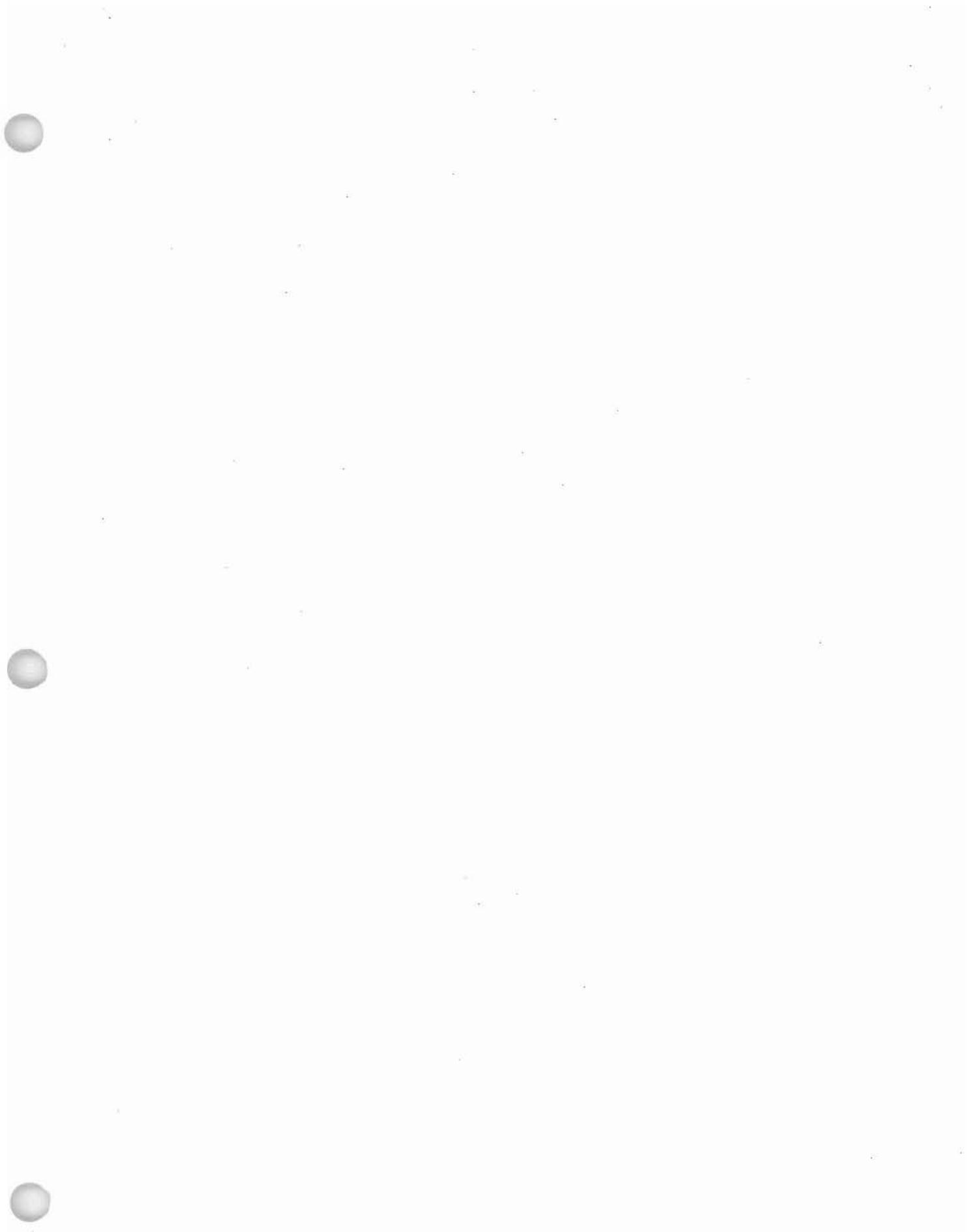
TRADE SCHOOLS THAT RELY HEAVILY ON FINANCIAL AID HAVE POORER STUDENT OUTCOMES

Proprietary schools that rely more heavily on Title IV funds have poorer student outcomes. The GAO report on this issue shows that programs with the highest reliance on Title IV funds, on average, have the highest default and the lowest completion and placement rates. When students default on federal loans the schools get paid, while the taxpayer and the students are left footing the bill. Often, the expensive training does not lead to jobs, but the Department has rejected the OIG recommendations to limit funds for education when the jobs are not there.

██████████, CEO of Corinthian, in a prior appearance before this committee told the committee that the Marietta campus of the Georgia Medical Institute had obtained 81.9 % of its revenue from title IV funds. The implication was that it was approaching 90%, so the 90/10 rule was bad.







However, he failed to mention that the default rate for that campus in 1999 was 2.8%, but then skyrocketed to 18.5 percent in just three years. One could conclude that this means nearly 1 in 5 students were unable to find employment sufficient to make the minimum loan payments, or did not know to apply for deferments.

GAO studies show students default because they do not have sufficient income to pay the loans. It is disingenuous for [REDACTED] or the directors of other schools to hide the motivations of for-profit institutions behind promises of improving access to education for minority students. I take exception to this.

I believe the real motive behind wanting to enroll more minority and low income students is that they are the most profitable students since they qualify for the highest amounts of federal financial aid and the smallest expected family contribution, or none at all.

Further, they are less likely to complain, and when they do they are less effective, because they don't know where to complain, or how to articulate their complaint, as they do not know the requirements of the law.

It is apparent that there are little or no admissions standards for many of these schools in practice, and unqualified students are enrolled (see prior discussion).

With the newly added pressures from Wall St., the FBI, the SEC, the Department of Education and this committee should be more concerned about protecting these students and taxpayers, rather than protecting the proprietary schools which have a history of violations.

PROBLEM SCHOOL IN MY DISTRICT

The American College of Medical Technology is an allied health school located in Gardena, CA in my district. Despite being sued at least twice for making misrepresentations to students, the same practices have continued. It is alleged by students that the school makes misleading remarks or fails to explain the certification that these students will receive after completing the MRI course.

The school implies that the students will be qualified for a more widely accepted certification regarding MRI use than what they actually get from the program, and the school provides grossly inflated estimates of probable starting salaries. This is what induces students to spend \$18,000 on tuition for the program.

Students complain of the following:

they have not been given any hands on experience with the appropriate machinery for their field,

they were given textbooks that covered different material than that for the course of instruction in which they enrolled, and

they had instructors that were unable to answer the simplest of questions related to the material.

Despite the lawsuits and multiple student complaints, the school proceeds unabated in any way, unhindered by the state enforcement agency or its accrediting agency. Additional complaints will be filed.

Further, the course does not meet the minimum completion / placement rules under California law. Thus, the school should be ordered to stop offering this program. But the enforcement agency has refused to enforce the law, and the accrediting agency has also been remiss.

PROBLEMS WITH THE CURRENT LAW

Although most of my comments have been limited to the 90/10 provision, I disagree with CEO of Corinthian, [REDACTED] comments at the previous hearing, which indicate that the other safeguards regarding schools are sufficient. HR 507 must be defeated.

Accreditation does not ensure a quality education (see discussion above). The cap on default rates can be avoided by not enrolling ATB students and / or by changing to Sallie Mae private loans if the school exceeds the default ceiling for two years.

Further, the change in the computation of default rates has helped the schools by lowering their default rates by not counting students who default after their deferment runs out. The new method of counting defaults protects schools from reaching the 25% threshold over three years, and being barred from receiving financial aid.

The new method of counting defaults looks at only the first two years of repayment, and counts those with a deferment as if they were repaying the loan. But the rules for deferment and forbearance were liberalized, so that the deferment for economic hardship is more easily obtained.

So, low income students would most likely default after the two year period had elapsed, and their deferment ended. But since the default occurred after the first two years, it will no be counted against the school for purposes of computing the default rate.

Between 1993 and 1996, the percentage of proprietary students whose loans were in deferment increased from 3.7% to 9.1%. These new rules save schools from defaulting out of the financial aid program, (but it doesn't help the students or change the actual v. reported default rate). For example, 352 schools, rather than the 181 would exceed the 25% threshold if those whose loans were in deferment or forbearance were excluded from the default calculation.

Nevertheless, proprietary schools count for an inordinate percentage of the defaults. Further, defaults at two-year proprietary institutions exceed that of two-year non-profit institutions.

The satisfactory progress requirement can easily be avoided by giving the students the answers to the test (this is common) or simply changing the grades or re-enrolling the students. The Department is not sufficiently diligent in seeking refunds from problem schools or getting a large enough letter of credit. They often accommodate schools rather than protecting the students and the taxpayers.

Further, the Department does not investigate charges made by students regarding misrepresentations made to influence students to enroll, such as:

transferability of units

the probable starting salary

the percentage of students who completed and were placed in a job (even though federal regulations single these violations out as common, and only gives the Department, not private attorneys, the right to enforce these provisions)

experience and quality of the teachers

the availability of equipment, books, and supplies

the type of certification one can get upon graduation.

This is very sad, because these federal regulations have no private right of action, and can only be enforced by the Department, which does not do its job.

SCHOOLS SHOULD HAVE A REPORTING REQUIREMENT

The Federal regulations specifically prohibiting these practices listed above. But these prohibitions may as well not exist for all the (non-existent) enforcement that is done by the Department. We should not have to count on whistleblowers or private attorneys to do the Department's job. There should be specific laws and regulations which only apply to trade schools (those with no significant general education requirements).

Such schools should be required to report all lawsuits filed by students and stockholders against the school and all lawsuits filed by former employees or stockholders that allege violations of financial aid or education laws and / or regulations. The Department should be required to investigate all such allegations. The Department should be given no discretion in this regard.

All trade schools should also be required to give a copy of any confidential settlement of such a lawsuit to the Department, the OIG and the state enforcement agency. The Department should not simply ignore such suits which are a source of evidence, as is the case now.

Furthermore, this committee should investigate why the Department does not sufficiently investigate schools that violate the law and hand out appropriate penalties when they show no mercy to defaulting students who have been defrauded and are having 15% of their paychecks or disability checks taken so they are not left with sufficient funds to support their families.

The low income former students' earned income tax credits, which are to benefit low income children and tax refunds, are taken year after year from defrauded students who defaulted and did not get a job. The amount owed by the student never goes down because of added interest and huge collection fees which can add an additional 40% to the amount owing. These trade school students get zero priority from the department. This has simply got to change.

CONCLUSION

For the reasons discussed, above it is essential that the 90/10 rule be maintained and the fraction needs to be increased. To do anything else is to declare open season on low-income people and minorities. I am dead set against this.

To eliminate the rule will cause a whole lot of heart ache and family disruption at the lower end of the economic ladder. These families will be squeezed to the breaking point when the Department of Education tries to collect on the \$40,000 in loans, when the family member did not get a job and has barely enough to feed and house the family.

I do not view these schools as offering opportunities to my constituents. These schools are using my mostly African-American and Latino constituents as mere ciphers to get the highest level of financial aid. They want my constituents merely to feed there bottom line without regard to the misery that most certainly will follow.

TRANSCRIPT OF THE SIXTY MINUTES SEGMENT

For-Profit College: Costly Lesson

Jan. 30, 2005

Are you interested in a new career? Are you looking for specialized training and a high-paying job in computers, fashion or health care?

Well, a lot of people must be, because companies selling that dream, the for-profit career colleges, are one of the fastest growing area in the field of education.

It's a multi-billion dollar business with most of the revenues guaranteed by the federal government, and until recently the industry was the darling of Wall Street.

Now, it's under scrutiny, with one of the biggest players facing allegations that it deceived investors, the federal government, and students, who say they've been taught a very expensive lesson. Correspondent [REDACTED] reports.

If you've ever watched daytime TV, you've probably seen one of Career Education Corporation's ads offering students a brand-new life.

"Ever think you could be part of this? With the right training, you can!"

That one was for the Katharine Gibbs schools, which were bought by Career Education Corporation in 1997, and make up just a small part of its scholastic empire.

A year ago, CEC was one the hottest stocks on the NASDAQ exchange, with five years of record growth and \$1 billion in annual revenue. It comes from nearly 100,000 students at 82 different campuses, taking classes in everything from computer animation to the culinary arts.

Brooks College in Long Beach, Calif., offers training in fashion and design, but its graduates have a special nickname for their alma mater: "Crooks College."

Why?

"Cuz they robbed us," says one graduate.

"Everything was a lie," says another.

What was the biggest lie?

"Job placement -- 98 percent job placement," several graduates said. "They said, like, starting \$30,000 a year, \$30,000 or more."

[REDACTED] enrolled to study fashion merchandising after the school signed them up for tens of thousands of dollars in student loans, and showed them videos promising to help them get jobs with companies like Giorgio Armani.

Did Brooks College find any of them a job? No, they said.

Did it make an attempt to find them a job? Again, they said no.

The school declined to comment, but 60 Minutes knows that all three women graduated near the top of their classes. A year later, none had been able to find the kind of job she was supposedly trained for.

Brooke was managing a telephone store; [REDACTED] was unemployed; and [REDACTED] was selling T-shirts. All of them went heavily into debt to get a two-year degree they now believe has little value.

"The school has no credibility with the fashion industry, whatsoever," says Thurston.

Complaints, laid out in a number of lawsuits against CEC by former students, investors, and employees, are now under investigation by the Justice Department and the Securities and Exchange Commission.

The lawsuits and the investigations were cited by CEC as the reason for declining a request by 60 Minutes for an on-camera interview.

But there were plenty of other people willing to talk on-camera. One man, who wore sunglasses and a visor, said, "I am completely embarrassed that I ever worked at Brooks College or for CEC."

This man, along with two of his former colleagues, [REDACTED] and [REDACTED], used to work at Brooks College. They say there were some dedicated teachers there, but that the administration was more interested in making money than in educating students.

[REDACTED]'s title was admissions representative. But [REDACTED] says "we were really sales people."

"Selling the dream, basically," says [REDACTED].

"We're selling you that you're gonna have a 95 percent chance that you are gonna have a job paying \$35,000 to \$40,000 a year by the time they are done in 18 months," says [REDACTED]. "We later found out it's not true at all."

"Yeah, it wasn't true at all," says [REDACTED].

According to an evaluation report from the Western Association of Schools and Colleges, "Only about 38 percent of Brooks students ever finish the program," and the average starting salary for all graduates is "less than \$11 dollars per hour."

The admission counselors told 60 Minutes they were expected to enroll three high school graduates a week, regardless of their ability to complete the coursework. And if they didn't meet those quotas, they were out of a job, which is what the man in sunglasses says happened to him. They all say the pressure produced some very aggressive sales tactics.

"In that way, the job was a lot like a used-car lot, because if I couldn't close you, my boss would come in, try to close you," says Shannon.

The enrollment fee was \$50. "You need three things," says the man in sunglasses. "You need \$50, a pulse, and you've got to be able to sign your name. That's about it."

You have to sign your name to a government loan form. The government-backed student loans are crucial to the entire industry.

In 2003, they made up nearly 60 percent of CEC's revenues. And in order to be eligible for that money, CEC is required to provide students with accurate information about job placement.

Would CEC exist if it weren't for government loans?

"I don't believe that they would be a \$1 billion company in 10 years, if it weren't for the federal government loan programs," says [REDACTED], who was once the national manager in charge of student placement for all of Career Education Corporation's campuses in the United States.

[REDACTED], who was fired a few months ago, was one of more than 50 current or former employees with whom 60 Minutes spoke at more than a dozen schools. All had variations of the same story.

What was the corporate culture like?

"All about the numbers, all about the numbers," says [REDACTED]. "Getting students enrolled, getting students in the seats. Keeping students in the seats, getting them passed enough to graduate, and then trying to get them any job we could."

But getting students any job they could did not necessarily mean getting them jobs they were trained for. And she says a job placement could mean just about almost anything.

"It may be that, you know, they end up placing them folding T-shirts at the Gap at a fashion, as a fashion grad -- which is fine, but not what they were promised in the beginning," says [REDACTED].

"And a job they could've gotten without paying \$15,000 or \$30,000," says [REDACTED].

Actually, it is more like \$30,000 \$60,000 and \$80,000 depending on the program, says [REDACTED].

[REDACTED] says the quality of education varies from school to school, and that there are some very good programs and highly motivated students who find successful careers. But she says too many students simply don't have the aptitude or the skills necessary to succeed in class or the workplace.

"They were not prepared, but at the same time, the instructors were really pressured to pass them through that class to keep them in school," says [REDACTED].

So CEC could keep collecting the government money? "So they could keep the revenue," says Hanson.

CEC has denied these and other allegations in response to various lawsuits, and it says it's made compliance with government regulations and investigating complaints a top priority.

Chairman [REDACTED] wrote 60 Minutes saying, "We'll investigate the situations cited in your report and take appropriate corrective action as violations are identified."

And it did not take long to find a violation. To see how the admissions process works, 60 Minutes Associate Producer [REDACTED], armed with a hidden camera, went to a number of CEC schools in the New York area.

At the Katharine Gibbs School, she began by asking about graduation rates. She was told that 89 percent graduated.

But that wasn't even close. According to the Department of Education's most recent figures from 2003, this school's graduation rate was 29 percent not 89 percent, a difference of 60 points. Federal regulations require that prospective students be given the official statistics in writing prior to enrollment and the admission representative seemed ready to sign [REDACTED] up.

When [REDACTED] wanted to know about a career in fashion, this is what she was told: "These jobs pay a lot of money. You're looking at, if you take this craft and be very serious about it, you can make anywhere from hundreds of thousands to if you go up to be a designer."

But not everything at Career Education Corporation is fashion or business. Its Sanford Brown Institutes prepare students for careers in health care; training ultrasound and cardiovascular technicians; and medical and surgical assistants.

The admission representative told the associate producer that the school was highly selective. So [REDACTED] did everything she could to disqualify herself for admission to become a medical assistant, a nine-month program that costs almost \$13,000 prepares students for entry-level positions.

When lousy grades and prior drug use weren't enough to get her rejected, she tried a different approach. She told them she had a "problem with blood." The representative told her that "98 percent of our students have a problem with blood. The first day of the module, they don't hand you a syringe and say, 'Go for it.'"

The school did require the associate producer to take an admission test. She intentionally flunked it, getting just 7 out of 50 questions correct. But the school allowed her to take another test with different questions. This time, the admission representative said she had doubled her score to 14 out of 50, and that was just good enough to qualify for admission.

Although it was easy to get in, all the counselors told [REDACTED] she would have to work hard and attend class to complete the course. But [REDACTED] says what CEC is most interested in is tuition.

"They want to say that the student comes first, but I think it becomes obvious to anybody that works in the school, that the student does not come first," says [REDACTED]

Where does the student come? "The student comes with how many dollar signs are attached to them. And anything after that is secondary," says [REDACTED].

CEC is not the only publicly traded career-school operator in trouble with the federal government. Last fall, the Department of Education handed out its largest fine ever -- \$9.8 million dollars to the Apollo Group and its University of Phoenix for admitting unqualified students to boost enrollment.

And a year ago, federal agents raided the headquarters and 10 campuses of ITT Educational Services, investigating charges of falsified grades and attendance records.

[REDACTED] is president of the Career College Association, a Washington lobbying group that represents 1,100 career colleges in the United States.

"This is not an industrywide problem. And let me address the whole question of being under investigation," says [REDACTED]. "Allegations from a legal standpoint are not facts and are not evidence."

[REDACTED] says career colleges are a passport into the middle class for millions of people, a gateway to the American dream.

"Twenty-five percent of our students are working adults. Fifty percent are minority. Seventy percent are the first in their family to go to college. This is an extraordinary success story," says [REDACTED].

Rep. [REDACTED], who represents the poorest district in Los Angeles, isn't so sure. For the past 15 years, she's been the industry's most persistent critic.

"I have seen young person after young person who simply wanted to get trained for a trade, for a job, get ripped off," says [REDACTED]

Why hasn't anything been done? "These private post-secondary schools are very sophisticated in its politics, and they actually have members of Congress who protect them," she says.

Over the past two years, career colleges and lending institutions that benefit from government-backed student loans handed out more than a million dollars in campaign contributions to members of the House Education Committee. Half of that money went to

the committee's two ranking members: Chairman ██████████ of Ohio and ██████████ ██████████ of California. Both declined requests for interviews.

As for the sales reps whom 60 Minutes spoke with, ██████████ has filed a discrimination lawsuit against CEC. ██████████ now works in finance, and the young man is the sunglasses is selling cars.

And the Brooks College graduates? They feel betrayed. They were sold the idea that an investment in education would change their lives. This investment did, but not in the way they were promised.

"My mother told me to declare bankruptcy and I'm only 21," says ██████████. "She said it'll go away in 10 years so when I'm 31 I can start my life all over."

"But we are all students that did everything we were supposed to, we gave it our all," says ██████████. "And we're still jobless. You know, like, it doesn't make sense."

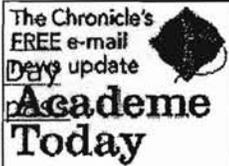
For-Profit College: Costly Lesson

<http://www.cbsnews.com/stories/2005/01/31/60minutes/main670479.shtml>

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EXHIBIT B



Disputes Over Regulating For-Profit Colleges Come to a Head in California

Other states are watching legislative debate on the future of the agency that oversees proprietary institutions

By [REDACTED]

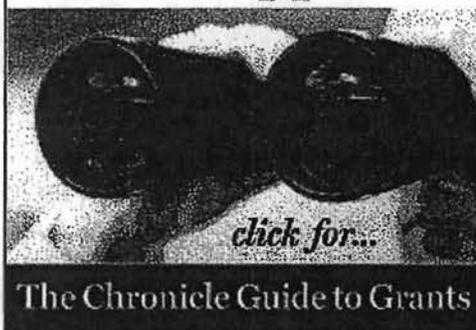
A battle is being waged in California over the degree to which for-profit colleges should be regulated, a fight that could ultimately ripple out to affect other states.

At issue is the future of a California regulatory bureau that oversees profit-making institutions. The state law that governs the Bureau for Private Postsecondary and Vocational Education is set to expire next year, and just about everybody involved believes substantial changes are needed.

But that's where the agreement ends. Deep divisions have emerged over what kind of changes are needed.

On one side are consumer-watchdog and legal-aid groups that advocate for students, who believe they need more protection from unscrupulous institutions. Those groups are calling on the

Searching for more support?



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state legislature to strengthen the bureau's powers to ensure that for-profit institutions tell the truth about their performance in graduating students and placing them in jobs.

On the other side are for-profit higher-education companies, which oppose efforts to strengthen the bureau's regulatory powers. They complain that bureaucratic red tape at the agency stifles their attempts to expand in California. They are championing legislation that would weaken the bureau and make it easier for new programs and campuses to be approved.

The stakes are high for for-profit colleges, which enroll more than 400,000 students at over 3,000 campuses in California at any one time. In fact, four of the largest for-profit higher-education companies spent almost a half-a-million dollars on lobbying efforts during this past legislative session, according to state records.

The debate in California comes at a time when profit-making colleges are the subject of increasing scrutiny. Over the last two years, federal and state investigators have been examining allegations that some publicly traded for-profit higher-education companies — including the Apollo Group and Career Education Corporation, which own the two largest chains of commercial colleges — have engaged in aggressive and misleading recruiting and admissions tactics to inflate their enrollments.

During this time, agencies in six states — California, Florida, Kentucky, New Jersey, Oregon, and Pennsylvania — have undertaken regulatory reviews or investigations into the activities of various for-profit colleges. Last month the New York State Board of Regents endorsed a package of proposals designed to provide greater oversight of new for-profit colleges and those undergoing a change of ownership. The board also called for increasing scrutiny of the admissions practices of all such colleges operating

Sharing the Pain: Cutting Faculty Salaries Across the Board

Some colleges try to limit the damage of financial cutbacks by spreading them around, but the method is not a clear success.

[Considering Layoffs? Tips for Avoiding Legal Problems](#)

[Making the Cuts: Warnings for Faculty Members and Campus Leaders](#)

Scholarly Presses Discuss What It Takes to Survive

Medical Educators Pitch Their Priorities in Health-Care Debate

Kansas State U. Audit Finds Possible Financial Shenanigans

Gates Foundation Chooses 15 Community Colleges for New Program

Commentary

John W. McArthur and Jeffrey Sachs: We Need a New Generation of Problem Solvers

in the state.

The New York proposals are part of a set of reforms that the department says are necessary to curb recruiting fraud and other abuses by some of the colleges. They came months after the state Education Department's high-profile crackdown, in December, against the Interboro Institute, a college owned by the EVCI Career Colleges Holding Corporation, for the overly aggressive recruiting of students who were not adequately prepared for college-level work.

But now all eyes are on the fight in California, says [REDACTED], an administrator in the Oregon Student Assistance Commission, which oversees for-profit colleges in that state.

The sheer number of students who receive degrees from proprietary colleges in California affects other states, he says. With so many of those institutions' graduates entering the work force, "employers all over the country have an interest in whether the California agency is able to do its work."

A Long History

While the fight over the bureau is especially fierce now, its roots date back the late 1980s, a time when the state was widely maligned as a haven for fraudulent trade schools. In response, in 1989, the state legislature broadened its authority over for-profit colleges by establishing the independent Council for Private Postsecondary and Vocational Education. Over the next decade, the council was widely credited with cleaning up the state's trade-school problems.

The council's success as an enforcement arm, however, also provoked many for-profit-college owners to lobby for its elimination. Their complaints in the mid-1990s about the council's high licensing fees and the difficulties of appealing its decisions won a sympathetic hearing from then-governor Pete Wilson, a Republican.

At the governor's urging, lawmakers took away the agency's independence in 1997 and placed it under the control of the state's Department of Consumer Affairs, where it was renamed the Bureau for Private Postsecondary and Vocational Education. Legislators also cut back on its budget and its staff, and weakened its evaluation standards.

Consumer watchdogs say the bureau is a shell of its former self, lacking the

resources it needs to do its job effectively.

"Since 1998, there has been no enforcement of the law," says [REDACTED], a senior lawyer at the Legal Aid Foundation of Los Angeles. "The bureau does absolutely nothing regarding investigating student complaints, which they are required to investigate under the law."

Even in the rare cases when the bureau tries to take action, these critics say, it is ineffectual.

They point to the bureau's attempt to crack down on Brooks Institute of Photography, a for-profit institution in Santa Barbara.

A Conflict of Interest?

In July 2005, officials at the bureau restricted the operating license of the Brooks Institute, alleging that the institution deliberately misled its students about their employment prospects by falsifying job-placement data.

Career Education Corporation, which owns the Brooks Institute, appealed the bureau's actions, and an administrative judge in Los Angeles proposed to dismiss the bureau's notice of conditional approval in February, after determining that it had not done a thorough on-site review of the institution.

The California Department of Consumer Affairs accepted the decision, and allowed the Brooks Institute to continue its normal operations until another full on-site review has been completed.

Advocates for students, and some state officials, were extremely unhappy with the department's decision not to appeal the case. As a result, "degree schools will think that all they have to do is challenge the bureau legally, and it will postpone any consequences," said one state official who requested anonymity for fear of offending department leaders.

Some of these critics question whether the bureau's leaders are committed to fulfilling its mission. They point out that [REDACTED], the bureau chief, served as an adjunct professor at the University of Phoenix, which is owned by the Apollo Group, before taking her current job. [REDACTED], who taught courses in business and health care at the university, declined to comment for this article.

"Because she is a former University of Phoenix faculty member, she

recused herself from matters involving that institution," another state official said, "but her inaction has actually benefited the school because she hasn't opposed them on anything." The University of Phoenix enrolls nearly 40,000 students in California at its five main campuses, 35 learning centers, and through its online program.

Advocates for students have been especially unhappy with how the bureau has interpreted a law, approved by the California legislature in 2003, that exempted some of the largest chains of for-profit colleges, like the University of Phoenix, from reviews for new programs or new campuses in the state. That law was meant to streamline the regulatory process for proprietary colleges accredited by regional agencies other than the Western Association of Schools and Colleges (WASC), which accredits most colleges in California.

The bureau has interpreted the law broadly to largely exempt the big institutions from student-protection and information-reporting requirements that colleges accredited by the Western association must follow. As a result, consumer watchdogs say, the bureau has failed to investigate allegations that some of the biggest for-profit chains are engaging in false and misleading advertising.

Last month the U.S. District Court judge in Los Angeles ruled against the bureau's interpretation. In a case involving DeVry University, U.S. District [REDACTED] said that the "only reasonable interpretation is that while the legislature sought to streamline the approval process for non-WASC regionally accredited institutions, it did not intend to exempt them from the minimum standards."

Lobbyists for for-profit colleges, who are looking to lessen the bureau's regulatory power, say the watchdogs are misguided in attacking their sector.

"The student-advocate people are absolutely living in the 80s," says [REDACTED] executive director of the California Association of Private Postsecondary Schools. "In the world of the advocates, nothing's changed — they still think every for-profit is evil."

Legislative Rumble

The battle over the future of the bureau came to a head in February when two California state lawmakers, both Democrats, introduced competing bills to overhaul the agency.

One bill (Assembly Bill 2810), offered by [REDACTED], a Democrat who is chairwoman of the Higher Education Committee in the California Assembly, would have strengthened the state's enforcement power by making it easier, for instance, for the regulatory agency to close down colleges that have engaged in fraudulent behavior.

The other bill (Senate Bill 1473), introduced by [REDACTED], chairwoman of the State Senate Committee on Business, Professions, and Economic Development, would have allowed any accredited institution to offer educational programs in the state without approval from the bureau.

Facing intense opposition from consumer watchdogs and advocates for students, [REDACTED] bill has been tabled for now. "Those who opposed my bill think that almost every profit-making institution is a menace to the education system, and that they either need to be closed down or overregulated so that it's difficult for them to operate," [REDACTED] said in an interview.

"There doesn't necessarily have to be more reporting from schools," she added. "We should treat them more like businesses, and make sure that they meet the standards necessary to provide the services they promise."

Lobbyists for for-profit institutions have vigorously fought [REDACTED] bill, arguing that it is unnecessary. By increasing regulation in the state, [REDACTED] says, [REDACTED] bill "would effectively take California off the list for a lot of schools looking to do business here."

[REDACTED] insists that she has nothing against for-profit colleges, and acknowledges that they play an important role, but argues that the bad ones need to be weeded out. "If our public and private institutions aren't meeting needs, there's room for competition if you're providing a legitimate service," she said in an interview.

The California Assembly easily passed the legislation, but it ran into trouble in the State Senate when it came up for review in [REDACTED] committee. The panel approved the bill, but only after significantly altering it.

As amended, the legislation, which is headed to the Senate appropriations committee, would establish a committee of state officials to review the bureau's operations and make recommendations on how it should be restructured.

Advocates for students, who had championed [redacted] bill, were outraged by the changes, and they accused [redacted] of gutting the bill. "All the important provisions have been stripped," says [redacted] of the Legal Aid Foundation.

Several proprietary institutions in California supported [redacted] original bill. One of them is California Coast University, a for-profit institution that was founded in 1973. [redacted] the college's president, said [redacted] bill appealed to him because it proposed one set of standards for all for-profit colleges to follow. He said he is not worried about being made more vulnerable to litigation from unhappy students.

"Schools that are worried about that," he said, "are probably the ones that have had problems."

BATTLE OF THE BILLS

The fight in the California state legislature over the regulation of for-profit colleges concerns two competing bills. Here's a brief description of what those bills would do.

Senate Bill 1473	Assembly Bill 2810
<p>Backed by many for-profit colleges, this bill would weaken the authority of the California regulatory bureau that oversees proprietary institutions. The legislation would allow for-profit colleges that have been accredited to offer programs, expand campuses, or open entirely new campuses in the state without a regulatory review.</p>	<p>Championed by consumer-watchdog groups and advocates for students, the legislation would strengthen the state's enforcement power by making it easier, for instance, for the regulatory agency to close down colleges that have engaged in fraudulent behavior. The legislation would also require all for-profit institutions, including regionally accredited ones, to be approved by the state's regulatory agency before offering programs in California.</p>
<p>Sponsor: State Sen. Liz Figueroa, a Democrat and chairwoman of the California State Senate Committee on Business, Professions, and Economic Development</p>	<p>Sponsor: State Rep. Carol Liu, chairwoman of the Higher Education Committee in the California Assembly</p>
<p>Status: Because of concerns that the legislation would make it easier for unscrupulous institutions to defraud students, the bill, which was approved by Ms. Figueroa's panel in April, has been tabled.</p>	<p>Status: The California Assembly easily passed the legislation, but it ran into trouble in the State Senate when it came up for review in Ms. Figueroa's committee. To the frustration of the bill's supporters, that group significantly altered the bill before passing it. As amended, the legislation would establish a panel of state officials to review the bureau's operations and make recommendations on how it should be restructured.</p>

EXERTING INFLUENCE

With the state legislature in California debating the degree to which proprietary institutions should be regulated in the state, the leading for-

profit higher-education corporations are not just sitting on the sidelines. The companies have spent hundreds of thousands of dollars on lobbying to influence the debate. A few of the biggest spenders during the 2005-6 legislative session were:

Apollo Group	\$169,085
Corinthian Colleges	\$137,484
DeVry Inc.	\$90,000
Kaplan Inc.	\$76,000

SOURCE: California Secretary of State

<http://chronicle.com>
Section: Government & Politics
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EXHIBIT C

*Bureau for Private Postsecondary
and Vocational Education*



**THE PRIVATE POSTSECONDARY
AND VOCATIONAL EDUCATION
REFORM ACT**

January 1, 2002

State of California

Gray Davis
Governor

"Prospective students should be aware that as a graduate of an unaccredited school of psychology you may face restrictions that could include difficulty in obtaining licensing in a state outside of California and difficulty in obtaining a teaching job or appointment at an accredited college or university. It may also be difficult to work as a psychologist for some federal government or other public agencies, or to be appointed to the medical staff of a hospital. Some major managed care organizations, insurance companies, or preferred provider organizations may not reimburse individuals whose degrees are from unaccredited schools. Graduates of unaccredited schools may also face limitations in their abilities to be listed in the 'National Register of Health Service Providers' or to hold memberships in other major organizations of psychologists."

- (b) Annually, each institution shall provide to the bureau a copy of the disclosure form signed by each student who has enrolled in any course during the year that may be used in the graduate education leading to a doctoral degree in psychology that qualifies the graduate as a candidate for the psychology licensure examination.
- (c) If an institution fails to satisfy any of the requirements of this section, the bureau may revoke the institution's approval to operate or to offer the psychology degree that leads to licensure as a psychologist, or may impose either an administrative penalty or a civil penalty not to exceed ten thousand dollars (\$10,000) per noted violation.

94816 SCHOOL PERFORMANCE FACT SHEET; DISCLOSURE REQUIREMENTS

- (a) Each institution offering a degree or diploma program designed to prepare students for a particular vocational, trade, or career field shall provide to each prospective student a school performance fact sheet disclosing all of the following information:

- (1) The number and percentage of students who begin the institution's program and successfully complete the entire program. The rate shall be calculated by determining the percentage of students enrolled in the program who were originally scheduled, at the time of enrollment, to complete the program in that calendar year and who successfully completed the program.
- (2) The passage rates of graduates in the program for the most recent calendar year that ended not less than six months prior to the date of disclosure on any licensure or certificate examination required by the state for employment in the particular vocational, trade, or career field and for any licensing preparation examination as required under subdivision (a) of Section 94734 for which data is available.
- (3) The number and percentage of students who begin the program and secure employment in the field for which they were trained. In calculating this rate, the institution shall consider as not having obtained employment, any graduate for whom the institution does not possess evidence, documented in his or her file, showing that he or she has obtained employment in the occupation for which the program is offered.
- (4) The average annual starting wages or salary of graduates of the institution's program, 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. The institution shall disclose to the prospective student the objective sources of information necessary to substantiate the truthfulness of the claim.

Each school that offers or advertises placement assistance for any course of instruction shall file with the council its placement statistics for the 12-month period or calendar year immediately preceding the date of the school's application for annual review for every course of instruction.

The council shall develop standards and criteria to be used by each institution in determining the statistical information required by this paragraph.

- (b) In addition to the fact sheet required by subdivision (a), each institution offering a degree program designed to prepare students for a particular vocation, trade, or career field and each institution subject to Article 7 (commencing with Section 94850) shall provide to each prospective student a statement in at least 12-point type that contains the following 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 our ____ (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."

The disclosures required by this section shall be signed by the institution and the student and be dated. If the solicitation or negotiation leading to the agreement for a course of instruction was in a language other than English, the disclosures shall be in that other language.

- (c) The council shall take into consideration the character of the educational program in determining whether specific programs may be excluded from application of this section.
- (d) Except as provided in subdivision (b), this section does not apply to educational programs subject to Article 7 (commencing with Section 94850).

§ 94818 AGENT FOR SERVICE OF PROCESS; ALTERNATIVE SERVICE

- (a) Every institution shall designate and maintain an agent for service of process within this state and provide the name, address, and telephone number of the agent to the council. The council shall furnish the agent's name, address, and telephone number to any person upon request.
- (b) If an institution is not operating in California when it applies for approval to operate, the institution shall set forth the name, address, and telephone number of its agent for service of process in the institution's application.
- (c) If an institution fails to designate or maintain an agent for service of process pursuant to subdivision (a) and if service on the institution cannot reasonably be effected in the manner provided in Section 415.10, 415.20, 415.30, or 415.40 of the Code of Civil Procedure, the institution may be served by leaving a copy of the process or any other document in an office of the council and by sending, by first-class mail, a notice of the service upon the council and a copy of the process or other document to the institution at its last address on file with the council. Service in this manner shall be deemed complete on the 10th day after that mailing to the institution. Proof of service may be made by a declaration showing compliance with this subdivision.

§ 94819 ACCREDITING AGENCY ACTION; NOTIFICATION REQUIREMENTS

Within 30 days of any action by any accrediting agency that establishes, reaffirms, or publicly sanctions the accreditation of any private postsecondary educational institution operating in the state, including those institutions that satisfy the requirements of paragraph (7) of subdivision (b) of Section 94739, the accrediting agency shall notify the bureau of that action and shall provide a copy of any public statements regarding the reasons for the accrediting agency's action.

§ 94820 TUITION REFUND POLICY; MINIMUM REQUIREMENTS

- (a) The institution shall have and maintain the policy set forth in this article for the refund of the unused portion of tuition fees and other charges if the

- (n) The failure to correct any deficiency or act of noncompliance under this chapter, or the standards, rules, regulations, and orders established and adopted under this chapter within reasonable time limits set by the council.
- (o) The conducting of business or instructional services at any location not approved by the council.
- (p) Failure on the part of an institution to comply with provisions of law or regulations governing sanitary conditions of that institution specified in Division 2 (commencing with Section 500) and Division 3 (commencing with Section 5000) of the Business and Professions Code.
- (q) The failure to pay any fees, order for costs and expenses under Section 94935, assessments, or penalties owed to the council, as provided in this chapter.

§ 94831 PROHIBITED ACTIVITIES BY INSTITUTIONS OR REPRESENTATIVES

No institution, or representative of that institution shall do any of the following:

- (a) Operate in this state a postsecondary educational institution not exempted from this chapter, unless the institution is currently approved to operate pursuant to this chapter. The council may institute an action, pursuant to Section 94955, to prevent any individual or entity from operating an institution in this state that has not been approved to operate pursuant to this chapter and to obtain any relief authorized by that section.
- (b) Offer in this state, as or through an agent, enrollment or instruction in, or the granting of educational credentials from, an institution not exempted from this chapter, whether that institution is within or outside this state, unless that agent is a natural person and has a currently valid agent's permit issued pursuant to this chapter, or accept contracts or enrollment applications from an agent who does not have a current permit as required by this chapter. The council, however, may adopt regulations to permit the rendering of legitimate public information services without a permit.

- (c) Instruct or educate, or offer to instruct or educate, including soliciting for those purposes, enroll or offer to enroll, contract or offer to contract with any person for that purpose, or award any educational credential, or contract with any institution or party to perform any act, in this state, whether that person, agent, group, or entity is located within or without this state, unless that person, agent, group, or entity observes and is in compliance with the minimum standards set forth in this article and Article 7 (commencing with Section 94850), if it is applicable, the criteria established by the council pursuant to subdivision (b) of Section 94773, and the regulations adopted by the council pursuant to subdivision (c) of Section 94773.
- (d) Use, or allow the use of, any reproduction or facsimile of the Great Seal of the State of California on any diploma.
- (e) Promise or guarantee employment.
- (f) Advertise concerning job availability, degree of skill and length of time required to learn a trade or skill unless the information is accurate and in no way misleading.
- (g) Advertise, or indicate in any promotional material, that correspondence instruction, or correspondence courses of study are offered without including in all advertising or promotional material the fact that the instruction or programs of study are offered by correspondence or home study.
- (h) Advertise, or indicate in any promotional material, that resident instruction, or programs of study are offered without including in all advertising or promotional material the location where the training is given or the location of the resident instruction.
- (i) Solicit students for enrollment by causing any advertisement to be published in "help wanted" columns in any magazine, newspaper, or publication or use "blind" advertising that fails to identify the school or institution.

- (j) Advertise, or indicate in any promotional material, that the institution is accredited, unless the institution has been recognized or approved as meeting the standards established by an accrediting agency recognized by the United States Department of Education or the Committee of Bar Examiners for the State of California.
- (k) Fail to comply with federal requirements relating to the disclosure of information to students regarding vocational and career training programs, as described in Section 94816.

1832 PROHIBITED CONTRACT SOLICITATION STATEMENTS AND PRACTICES

- (a) No institution or representative of an institution shall make or cause to be made any statement that is in any manner untrue or misleading, either by actual statement, omission, or intimation.
- (b) No institution or representative of an institution shall engage in any false, deceptive, misleading, or unfair act in connection with any matter, including the institution's advertising and promotion, the recruitment of students for enrollment in the institution, the offer or sale of a program of instruction, course length, course credits, the withholding of equipment, educational materials, or loan or grant funds from a student, training and instruction, the collection of payments, or job placement.
- (c) An institution is liable in any civil or administrative action or proceeding for any violation of this article committed by a representative of the institution. An institution is liable in a criminal action for violations of this article committed by a representative of the institution to the extent permitted by law.
- (d) (1) No institution or representative of an institution shall induce a person to enter into an agreement for a program of instruction by offering to compensate that person to act as the institution's representative in the solicitation, referral, or recruitment of others for enrollment in the institution.

- (2) No institution or representative of an institution shall offer to pay or pay any consideration to a student or prospective student to act as a representative of the institution with regard to the solicitation, referral, or recruitment of any person for enrollment in the institution in either of the following:
 - (A) During the 60-day period following the date on which the student began the program.
 - (B) At any subsequent time, if the student has not maintained satisfactory academic progress in acquiring the necessary level of education, training, skill, and experience to obtain employment in the occupation or job title to which the program is represented to lead. The institution shall have the burden of proof to establish that the student has maintained satisfactory academic progress.
- (e) No institution shall compensate a representative involved in recruitment, enrollment, admissions, student attendance, or sales of equipment to students on the basis of a commission, commission draw, bonus, quota, or other similar method except as follows:
 - (1) If the program of instruction is scheduled to be completed in 90 days or less, the institution shall pay compensation related to a particular student only if that student completes the course.
 - (2) If the program of instruction is scheduled to be completed in more than 90 days, the institution shall pay compensation related to a particular student as follows:
 - (A) No compensation shall be paid for at least 90 days after that student has begun the program.
 - (B) Up to one-half of the compensation may be paid before the student completes the program only if the student has made satisfactory academic progress, documented by the institution in the student's file, for more than 90 days.

- (C) The remainder of the compensation shall be paid only after the student's completion of the program. This subdivision shall not prevent the payment at any time of an hourly, weekly, monthly, or annual wage or salary.
- (f) No institution or representative of an institution shall pay any consideration to a person to induce that person to sign an agreement for a program of instruction.
- (g) No institution shall use a misleading name in any manner implying any of the following:
- (1) The institution is affiliated with any governmental agency, public or private corporation, agency, or association.
 - (2) The institution is a public institution.
 - (3) The institution grants degrees.
- (h) (1) No institution or any representative of an institution shall in any manner make any untrue or misleading change in, or untrue or misleading statement related to, any test score, grade, record of grades, attendance record, record indicating student completion or employment, financial information, including any of the following:
- (A) Any financial report required to be filed pursuant to Sections 94804 to 94808, inclusive.
 - (B) Any information or record relating to the student's eligibility for financial assistance or attendance at the institution.
 - (C) Any other record or document required by this chapter or by the council.
- (2) No institution or any representative of an institution shall falsify, destroy, or conceal any record or other item described in paragraph (1) while that record or item is required to be maintained by this chapter or by the council.

- (i) No institution or representative of an institution shall use the terms "approval," "approved," "approval to operate," or "approved to operate" without stating clearly and conspicuously that approval to operate means compliance with minimum state standards and does not imply any endorsement or recommendation by the state or by the council. If the council has granted an institution approval to operate, the institution or its representative may indicate that the institution is "licensed" or "licensed to operate" but may not state or imply any of the following:
- (1) The institution or its programs of instruction are endorsed or recommended by the state or by the council.
 - (2) The council's grant to the institution of approval to operate indicates that the institution exceeds minimum state standards.
 - (3) The council or the state endorses or recommends the institution.
- (j) No institution offering programs or courses of instruction represented to lead to occupations or job titles requiring licensure shall enter into an agreement for a course of instruction with a person whom the institution knows or, by the exercise of reasonable care, should know, would be ineligible to obtain licensure in the occupation or job title to which the course of instruction is represented to lead, at the time of the scheduled date of course completion, for reasons such as age, physical characteristics, or relevant past criminal conviction.
- (k) No institution shall divide or structure a program of instruction or educational service to avoid the application of any provision of this chapter.
- (l) No institution or representative of an institution shall direct a representative to perform any unlawful act, to refrain from complaining or reporting unlawful conduct to the council or another government agency, or to engage in any unfair act to persuade a student not to complain to the council or another government agency.

- (2) The institution proposes to offer a course of instruction at the branch or satellite campus that could not be offered at another site operated by the institution because of the institution's failure to satisfy the standards prescribed in Section 94854.
- (3) If the institution participates in a federal student loan program, the student loan default rate attributable to the institution for the two most recent years, as preliminarily announced or finally determined by the United States Department of Education, is 25 percent or more.
- (4) The establishment of a branch or satellite campus would, in any manner, facilitate the institution's avoidance or evasion of this chapter or of any state or federal law applicable to a student financial aid program in which the institution participates.

14859 PRECONTRACT DISCLOSURES TO PROSPECTIVE STUDENTS

- (a) Before a person executes an agreement obligating that person to pay any money to an institution for a program of instruction or related equipment, the institution shall provide the person with all of the following:
 - (1) A copy of the agreement containing all of the information required by Section 94871.
 - (2) If the institution has offered the course of instruction for at least one calendar year, it shall provide orally and in writing all of the following information:
 - (A) The percentage of students completing that program of instruction as determined pursuant to Section 94854, for the time period that is required to be covered in the last annual report that institution was required to file with the council pursuant to Section 94861.
 - (B) The percentage of students who completed the program of instruction and obtained employment as determined pursuant

to Section 94854, for the time period that is required to be covered in the last annual report that the institution was required to file with the council pursuant to Section 94861.

- (C) Any other information necessary to substantiate the truth of any claim made by the institution as to job placement.
- (D) If the institution or a representative of the institution makes any express or implied claim about the salary that may be earned after completing a program of instruction, such as a claim that the student may be able to repay a student loan from the salary received at a job obtained following completion of the program of instruction, the following disclosures, orally and in writing:
 - (i) The percentage of students who were originally scheduled, at the time of enrollment, to complete the program of instruction in the most recent calendar year that ended not less than six months prior to the date of disclosure who earn salaries at or above the claimed level.
 - (ii) The ranges of monthly salaries earned by these students in two hundred dollar (\$200) increments and the number of these students in each salary range.
- (E) If the institution or a representative of the institution in any manner represents that the program of instruction might lead to employment in an occupation or job title for which a state licensing examination is required, the following disclosures, orally and in writing:
 - (i) All licensure or certification requirements established by the state for the occupation or job title category.
 - (ii) The pass rate of graduates of the program of instruction offered by that institution for the most recent calendar year that ended not less than six months prior to the date of disclosure on any licensure or certification examination

required by the state for the particular occupation or job title.

- (3) If the institution has offered the program of instruction for less than one calendar year, the following statement: "This program is new. We are not able to tell you how many students graduate, how many students find jobs, or how much money you can earn after finishing this course."
- (4) A current catalog or brochure containing information describing the courses offered, all of the occupations or job titles, if any, to which the program of instruction is represented to lead, length of program, faculty and their qualifications, schedule of tuition payments, fees, and all other charges and expenses necessary for completion of the course of instruction, cancellation and refund rights, the total cost of tuition over the entire period, a description of the student's rights under the Student Tuition Recovery Fund established pursuant to Section 94944, and all other material facts concerning the institution and the program of instruction that might reasonably affect the student's decision to enroll.
- (5) If applicable, the following disclosures, orally and in writing:
 - (A) If the student obtains a loan to pay for the course of instruction, the student will have the responsibility to repay the full amount of the loan plus interest, less the amount of any refund.
 - (B) If the student is eligible for a loan guaranteed or reinsured by the state or federal government and the student defaults on the loan:
 - (i) The federal or state government or the loan guarantee agency can take action against the student, including applying any income tax refund to which the person is entitled to reduce the balance owed on the loan.

- (ii) The student may not be eligible for any other federal financial assistance for education at a different school or for government housing assistance until the loan is repaid.
- (C) The institution is not a public institution.
- (D) The institution has filed, or has had filed against it, a petition in bankruptcy.
- (6) A written statement set forth in a table of the amount of the refund to which the student would be entitled if the student withdrew from the program after completing a period of days or weeks of instruction equivalent to 10 percent, 25 percent, 50 percent, 60 percent, and 75 percent of the program of instruction. The disclosures required by this paragraph may be set forth in the agreement for the course.
- (b) The information required by paragraph (2) of subdivision (a) shall be documented by the institution with all facts needed to substantiate that information. Any information regarding a student's employment shall be based on an inquiry by the institution and shall be documented by a list indicating the student's name, address, and telephone number; the employer's name, address, and telephone number; the name and address or telephone number of the person who provided the information regarding the student's employment to the institution; the name, title, or description of the job; the date the student obtained the job; the duration of the student's employment; and the amount of the salary, if any salary claim has been made. Except as provided in Section 94874, an institution shall not disclose the records maintained pursuant to this subdivision unless production of those records are required by any law or by subpoena or court order, or are necessary for a certified public accountant to prepare a compliance report pursuant to subdivision (g) of Section 94870.
- (c) No institution which has offered a course of instruction for less than one year shall make any express or implied claims about the salary that a student may earn after completing the course of instruction.

- (d) The institution shall provide the catalog or brochure described in paragraph (4) of subdivision (a) to any person upon request.
- (e) The written disclosure of information required by subparagraphs (A), (B), and (C) of paragraph (2) of subdivision (a) may be made in accordance with the chart in Appendix A of Part 668 of Title 34 of the Code of Federal Regulations, or any other similar form prescribed by law for the disclosure of that information.
- (f) No institution shall obtain the signature of any person to an agreement obligating that person to pay any money to the institution until the person has had a reasonable opportunity to read and review all of the items described in subdivision (a).
- (g) The disclosure of any information pursuant to Section 94853 shall not relieve any institution of any obligation to make any disclosure required under this section.
- (h) Notwithstanding any provision of this section, an institution offering a home study or correspondence course need not orally make the disclosures required by this section in connection with that course if the institution did not orally solicit or recruit the student for enrollment and the student enrolled by mail.

§ 94860 PRECONTRACT DISCLOSURES FOR COURSES THAT DIFFER FROM MINIMUM STATE REQUIREMENTS FOR LICENSURE

If a state board, bureau, department, or agency has established the minimum number of classes or class hours or the minimum criteria of a course of instruction necessary for licensure in an occupation and an institution offers a course of instruction differing from the state entity's minimum requirements, the institution shall disclose orally and in writing the state entity's minimum requirements and how the course of instruction differs from those criteria. The institution shall make this disclosure before a prospective student executes an agreement obligating that person to pay any money to the institution for the course of instruction.

§ 94861 ANNUAL REPORT BY INSTITUTIONS; ELECTRONIC SUBMISSION; COMPLIANCE REVIEW; PROBATION; ENFORCEMENT ACTION

- (a) Every institution shall file annually with the council, on July 1, or an date designated by the council, a report subscribed under penalty of perjury that contains all of the following:
 - (1) The information described in subdivisions (a) and (b) of Section 94854.
 - (2) The information described in paragraph (2) of subdivision (a) of Section 94859.
 - (3) A statement that the information is documented as provided in subdivision (c) of Section 94854 and subdivision (b) of Section 94859.
 - (4) Financial information demonstrating compliance with Section 94855.
 - (5) Any additional information that the council may prescribe.
- (b) The council shall maintain each report for 10 years and shall provide copies of the reports to any person upon request.
- (c) Based on the review of the information submitted pursuant to this section the council may initiate a compliance review, may take action including placing the institution on probation as provided in Section 94878, or may require evidence of compliance with this article in a form satisfactory to the council.
- (d) The bureau shall develop standards and procedures for submission by institutions of the information pursuant to this section electronically or computer disk, in a standardized format.
- (e) If the institution uses any of the categories identified in subparagraph (a) of paragraph (2) of subdivision (k) of, or subdivision (n) or (o) of,

Section 94854 in determining compliance with that section, the information submitted pursuant to this section shall include the number of students that were included in each of the categories identified in those provisions.

62 BIENNIAL FINANCIAL REPORT BY INSTITUTIONS

Each institution shall file biennially with the council a financial report prepared pursuant to Section 94806. The report shall include the financial information required by Section 94855 and average monthly expenditures. Work papers for the report shall be retained for five years from the date of the audit report and shall be available to the council upon request after the completion of the audit.

63 RECRUITMENT AGENTS OR AGENCIES; PROHIBITION OF PAYMENT OF CONSIDERATION OR CONSUMMATION OF STUDENT CONTRACTS

- a) No institution shall pay any consideration to any agent subject to Section 94940 who has not complied with that section, or enter into an agreement, as described in Section 94871, with any person who was recruited or solicited to enroll in that institution by an agent who was not in compliance with Section 94940 at the time of the recruitment or solicitation.
- b) No institution shall pay any consideration to any agency subject to Section 94942 that has not complied with that section, or enter into an agreement, as described in Section 94871, with any person who was recruited or solicited to enroll in that institution by an agency or by an agent employed by or under contract with the agency if the agency was not in compliance with Section 94942 at the time of the recruitment or solicitation.

864 SPECIFIED COMPLIANCE DATA APPLICABLE TO SUCCESSOR INSTITUTION

Enrollment, course completion, and employment data used to determine compliance with subdivisions (a) and (b) of Section 94854 and paragraph (2) of subdivision (a) of Section 94859 shall continue to apply to an institution

notwithstanding a change in the institution's ownership, name, or identification number.

§ 94865 APPROVAL OF ENGLISH AS A SECOND LANGUAGE (ESL) INSTRUCTION

- (a) As used in this section, "ESL instruction" means any educational service involving instruction in English as a second language.
- (b) No institution shall offer ESL instruction without the prior approval of the bureau.
- (c) The bureau shall not approve an institution's offering of ESL instruction unless that institution complies with the minimum standards established in subdivision (a) of Section 94915.
- (d) An institution that offers ESL instruction to a student shall not enroll the student in any educational service presented in the English language unless the student passes a test indicating that he or she has attained adequate proficiency in oral and written English to comprehend instruction in English.
- (e) A student who has completed ESL instruction at an institution shall not be enrolled in any course of instruction presented in the English language at that institution unless the student passes a test indicating that he or she has attained adequate proficiency in oral and written English to be successfully trained by English language instruction to perform tasks associated with the occupations or job titles to which the educational program is represented to lead.
- (f) If an institution offers ESL instruction to a student to enable the student to use already existing knowledge, training, or skills in the pursuit of an occupation, the institution shall test the student after the student completes the ESL instruction to determine that the student has attained adequate proficiency in oral and written English to use his or her existing knowledge, training, or skills. Before enrolling the student in ESL instruction, the institution shall document the nature of the student's existing knowledge, training, or skills and that the ESL instruction is necessary to enable the student to use that existing knowledge, training, or skills.

- (g) If an institution offers ESL instruction to a student in connection with a course of instruction leading to employment in any occupation requiring licensure awarded after the passage of an examination offered in English, the institution shall test the student after the student completes the ESL instruction to determine that the student has attained a level of proficiency in English reasonably equivalent to the level of English in which the licensure examination is offered.
- (h) If the results of a test administered pursuant to subdivision (d), (e), (f), or (g) indicate that the student has not attained adequate English language proficiency after the completion of ESL instruction, the institution shall offer the student additional instruction without charge, for a period of up to 50 percent of the number of hours of instruction previously offered by the institution to the student, to enable the student to attain adequate English language proficiency.
- (i) This section does not apply to educational services exempted from this article under subdivision (c) of Section 94790 or to grantees funded under Section 1672 of Title 29 of the United States Code.
- (j) The institution, for five years, shall retain an exemplar of each language proficiency test administered pursuant to this section, an exemplar of the answer sheet for each test, a record of the score for each test, the answer sheets or other responses submitted by each person who took each test, and the documentation required by subdivision (f).
- (k)
 - (1) In addition to any applicable provisions of this chapter, this article, except for Section 94854, subparagraph (B) of paragraph (2) of subdivision (a) of Section 94859, and Section 94872, applies to any program in which ESL instruction is offered.
 - (2) For the purpose of determining compliance with this article, ESL instruction shall be deemed a course, and a charge shall be deemed to be made for ESL instruction if a student is obligated to make any payment in connection with the educational service, including, but not limited to, the ESL instruction that is offered by the institution.

- (l) The tests used by an institution pursuant to this section shall be tests that are approved by the United States Department of Education or tests such as the Test of English as a Foreign Language and the Comprehensive Adult Student Assessment System that are generally recognized by public and private institutions of higher learning in this state for the evaluation of English language proficiency. An institution shall demonstrate to the bureau that the tests and passing scores that it uses establish that students have acquired the degree of proficiency in oral and written English required by subdivision (d), (e), (f), or (g), whichever is applicable. The required level of proficiency in oral and written English shall not be lower than the sixth grade level.
- (m) All tests shall be independently administered, without charge to the student and in accordance with the procedures specified by the test publisher. The tests shall not be administered by a previous or current owner, director, consultant, or representative of the institution or by any person who previously had, or currently has, a direct or indirect financial interest in the institution other than the arrangement to administer the test. The bureau shall adopt regulations that contain criteria to ensure independent test administration including the criteria established by the United States Department of Education and set forth on pages 52160 and 52161 of Volume 55 of the Federal Register, dated December 19, 1990.
- (n) The bureau shall adopt regulations concerning the manner of documenting the nature of a student's existing knowledge, training, and skill and that ESL instruction offered by the institution is necessary to enable the student to use that existing knowledge, training, and skill, as prescribed in subdivision (f). The regulations shall specify all of the following:
 - (1) Reliable sources of information, independent of the student and the institution, from which documentation of a student's existing knowledge, training, and skill shall be obtained.
 - (2) Circumstances that must be documented by the institution to establish that information from a designated reliable source of information cannot reasonably be obtained.

- (3) Alternate acceptable sources of information if designated reliable sources are not available.
- (4) The nature of all required types of documentation.
- (o) The bureau shall develop and distribute instructions, informational materials, or forms to assist institutions in developing the documentation described in this section. These instructions, materials, and forms shall not be subject to review or approval by the Office of Administrative Law pursuant to any provision of the Government Code.

§ 94866 NOTICE OF STUDENT'S RIGHT TO CANCEL CONTRACT

- (a) When a person executes an agreement obligating that person to pay any money to an institution for a course program of instruction or related equipment, the institution shall provide the person with a document containing only the following notice:

"NOTICE OF STUDENT RIGHTS (12-point bold type)

"1. You may cancel your contract for school, without any penalty or obligations on the fifth business day following your first class session as described in the Notice of Cancellation form that will be given to you at (insert "the first class you go to" or "with the first lesson in a home study or correspondence course," whichever is applicable). A different cancellation policy applies for home study or correspondence courses. Read the Notice of Cancellation form for an explanation of your cancellation rights and responsibilities. If you have lost your Notice of Cancellation form, ask the school for a sample copy.

"2. After the end of the cancellation period, you also have the right to stop school at any time, and you have the right to receive a refund for the part of the course not taken. Your refund rights are described in the contract. If you have lost your contract, ask the school for a description of the refund policy.

"3. If the school closes before you graduate, you may be entitled to a refund. Contact the Council for Private Postsecondary

and Vocational Education at the address and telephone number printed below for information.

"4. If you have any complaints, questions, or problems that you cannot work out with the school, write or call the Council for Private and Postsecondary Education:

(insert address and telephone number of the Council for Private Postsecondary and Vocational Education)"

- (b) Except as otherwise provided in subdivision (a), the notice required by subdivision (a) shall be printed in 10-point type in English and, if any solicitation or negotiation leading to the agreement for a course of instruction was in a language other than English, in that other language.
- (c) A copy of the notice, in each language in which the notice was printed pursuant to subdivision (b), shall be posted at all times in a conspicuous place at the main entrance of the institution, in each admissions office, and in each room used for instruction. The council may prescribe the size and format of the posted notice. This subdivision does not apply to an institution that exclusively offers correspondence or home study courses.
- (d) Upon request, the institution shall provide a student with a copy of a Notice of Cancellation form, a written description of the student's refund rights, a copy of the contract executed by the student, a copy of documents relating to loans or grants for the student, and a copy of any document executed by the student.
- (e) The council may provide for the inclusion of additional information in the notice set forth in subdivision (a).

§ 94867 STUDENT'S RIGHT TO CANCEL CONTRACT FOR EDUCATIONAL SERVICES

- (a) (1) In addition to any other right of rescission, for programs in excess of 50 days, the student shall have the right to cancel an agreement for a program of instruction including any equipment, until midnight of

the fifth business day after the day on which the student did any of the following:

- (A) Attended the first class of the program of instruction that is the subject of the agreement or received the first lesson in a home study or correspondence course.
 - (B) Received a copy of the notice of cancellation as provided in Section 94868.
 - (C) Received a copy of the agreement and the disclosures as required by subdivision (a) of Section 94859, whichever is later.
- (2) For programs of 50 or fewer days, the student shall have the right to cancel the agreement until midnight of the date that is one business day for every 10 days of scheduled program length, rounded up for any fractional increments thereof. If the first lesson in a home-study or correspondence course is sent to the student by mail, the institution shall send it by first-class mail, postage prepaid, documented by a certificate of mailing, and the student shall have a right to cancel until midnight of the eighth business day after the first lesson was mailed.
- (b) Cancellation shall occur when the student gives written notice of cancellation to the institution at the address specified in the agreement.
 - (c) The written notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.
 - (d) The written notice of cancellation need not take a particular form and, however expressed, is effective if it indicates the student's desire not to be bound by the agreement.
 - (e) Except as provided in subdivision (f), if the student cancels the agreement, the student shall have no liability, and the institution shall refund any consideration paid by the student within 10 days after the institution receives notice of the cancellation.

- (f) If the institution gave the student any equipment, the student shall return the equipment within 10 days following the date of the Notice of Cancellation. If the student fails to return the equipment within this 10 day-period, the institution may retain that portion of the consideration paid by the student equal to the documented cost to the institution of the equipment and shall refund the portion of the consideration exceeding the documented cost to the institution of the equipment within 10 days after the period within which the student is required to return the equipment. The student may retain the equipment without further obligation to pay for it.
- (g) For the purpose of determining the time within which a student may cancel that student's agreement for a course, as described in Sections 94866, 94867, and 94868, "business day" means the following:
 - (1) Except as provided in paragraph (2), a day on which that student is scheduled to attend a class session.
 - (2) For home-study or correspondence courses, any calendar day except Saturday, Sunday, or any holiday enumerated in Section 6700 of the Government Code.

§ 94868 PROVISION OF CANCELLATION FORMS AT FIRST CLASS

The institution shall provide the student with two cancellation forms at the first class attended by the student or with the first lesson in a home study course submitted by the student. The form shall be completed in duplicate, captioned "Notice of Cancellation," and shall contain the following statement:

"Notice of Cancellation

_____ (Date)

(Enter date of first class, date first lesson received, or date first lesson was mailed, whichever is applicable)

"You may cancel this contract for school, without any penalty or obligation by the date stated below.

"If you cancel, any payment you have made and any negotiable instrument signed by you shall be returned to you within 30 days following the school's receipt of your cancellation notice.

"But, if the school gave you any equipment, you must return the equipment within 30 days of the date you signed a cancellation notice. If you do not return the equipment within this 30-day period, the school may keep an amount out of what you paid that equals the cost of the equipment. The total amount charged for each item of equipment shall be separately stated. The amount charged for each item of equipment shall not exceed the equipment's fair market value. The institution shall have the burden of proof to establish the equipment's fair market value. The school is required to refund any amount over that as provided above, and you may keep the equipment.

"To cancel the contract for school, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to:

_____, at _____
 (name of institution) (address of institution)

"NOT LATER THAN _____

(Enter midnight of the date that is the fifth business day following the day of the first class or the day the first lesson was received; or, if the program is fifty or fewer days, midnight of the date that is one business day for every 10 days of scheduled program length, rounded up for any fractional increment thereof; or, if the lesson was sent by mail, the eighth business day following the day of mailing, whichever is applicable)

"I cancel the contract for school.

 (Date)

 (Student's signature)

"REMEMBER, YOU MUST CANCEL IN WRITING. You do not have the right to cancel by just telephoning the school or by not coming to class.

"If you have any complaints, questions, or problems which you cannot work out with the school, write or call the Council for Private Postsecondary and Vocational Education:

 (insert address and telephone number of the Council for Private Postsecondary and Vocational Education)"

§ 94869 **STUDENT'S RIGHT TO WITHDRAW FROM PROGRAM OF INSTRUCTION; DUTY TO REFUND TUITION/EQUIPMENT PAYMENTS**

- (a) Each student of an institution has the right to withdraw from a program of instruction at any time.
- (b) If a student withdraws from a program of instruction after the period described in subdivision (a) of Section 94867, the institution shall remit a refund as provided in Section 94870 within 30 days following the student's withdrawal.
- (c) If any portion of the tuition was paid from the proceeds of a loan, the refund shall be sent to the lender or, if appropriate, to the state or federal agency that guaranteed or reinsured the loan. Any amount of the refund in excess of the unpaid balance of the loan shall be first used to repay any student financial aid program from which the student received benefits, in proportion to the amount of the benefits received, and any remaining amount shall be paid to the student.
- (d) Within 10 days of the day on which the refund is made, the institution shall notify the student in writing of the date on which the refund was made, the amount of the refund, the method of calculating the refund, and the name and address of the entity to which the refund was sent. The following statement shall be placed at the top of the notice in at least 10-point boldface type: "This Notice is Important. Keep It For Your Records."
- (e) Except for subdivision (a), this section shall not apply to a student if both of the following occur:

- (1) All of that student's tuition and fees are paid by a third-party organization, such as a Job Training Partnership Act agency, a Regional Occupational Program or Regional Occupational Center, a Private Industry Council, or a vocational rehabilitation program, if the student is not obligated to repay the third-party organization or does not lose time-limited educational benefits.
- (2) The third-party organization and the institution have a written agreement, entered into on or before the date the student enrolls, that no refund will be due to the student if the student withdraws prior to completion. The institution shall provide a copy of the written agreement to the bureau. The institution shall disclose to any student whose refund rights are affected by this agreement, in all disclosures required to be given to the student by this chapter, that the student is not entitled to a refund. It is the intent of the Legislature that this subdivision not apply to any student whose tuition and fees are paid with funds provided to the third-party organization for the student's benefit as part of any program that provides funds for training welfare recipients or that is related to welfare reform.

14870 **CALCULATION OF AMOUNT OF TUITION/EQUIPMENT REFUND**

- (a) (1) Except as provided in paragraph (2), the refund to be paid to a student for a program of instruction subject to this article shall be calculated as follows:
 - (A) Deduct a registration fee not exceeding seventy-five dollars (\$75) from the total tuition charge.
 - (B) Divide this figure by the number of hours in the program.
 - (C) The quotient is the hourly charge for the program.
 - (D) The amount owed by the student for purposes of calculating a refund is derived by multiplying the total hours attended by the hourly charge for instruction.

- (E) The refund would be any amount in excess of the figure derived in subparagraph (D) that was paid by the student.
 - (F) The refund amount shall be adjusted as provided in subdivision (b) or (c) for equipment, if applicable.
- (2) For an educational service offered by home study or correspondence, the refund shall be the amount the student paid for lessons less a registration fee not exceeding seventy-five dollars (\$75), multiplied by a fraction, the numerator of which is the number of lessons for which the student has paid but which the student has not completed and submitted, and the denominator of which is the total number of lessons for which the student has paid. The refund amount shall be adjusted as provided in subdivision (b) or (c) for equipment and as provided in subdivision (d) for resident instruction, if applicable.
 - (3) Notwithstanding any provision in any agreement, all of the following shall apply:
 - (A) All amounts that the student has paid, however denominated, shall be deemed to have been paid for instruction, unless the student has paid a specific charge for equipment set forth in the agreement for the program of instruction.
 - (B) In the case of an educational service offered by home study or correspondence, all amounts that the student has paid, however denominated, shall be deemed to have been paid for lessons unless the student has paid a specific charge for equipment or resident instruction as set forth in the agreement for the educational service.
 - (C) The total number of hours necessary to complete each lesson of home study or correspondence instruction shall be substantially equivalent to each other lesson unless otherwise permitted by the council.

(D) An equal charge shall be deemed to have been made for each hour of instruction or each lesson.

- (b) If the institution specifies in the agreement a separate charge for equipment that the student actually obtains and the student returns that equipment in good condition, allowing for reasonable wear and tear, within 30 days following the date of the student's withdrawal, the institution shall refund the charge for the equipment paid by the student. If the student fails to return that equipment in good condition, allowing for reasonable wear and tear, within 30 days following the date of the student's withdrawal, the institution may offset against the refund calculated under subdivision (a) the documented cost to the institution of that equipment. The student shall be liable for the amount, if any, by which the documented cost for equipment exceeds the refund amount calculated under subdivision (a). For the purpose of this subdivision, equipment cannot be returned in good condition if the equipment cannot be reused because of clearly recognized health and sanitary reasons and this fact is clearly and conspicuously disclosed in the agreement.
- (c) If the institution specifies in the agreement a separate charge for equipment, which the student has not obtained at the time of the student's withdrawal, the refund also shall include the amount paid by the student allocable to that equipment.
- (d) If an agreement for educational service offered by home study or correspondence includes a separate charge for resident instruction, which the student has not begun at the time of the student's withdrawal, the institution shall refund the charge for the resident instruction paid by the student. If the student withdraws from the educational service after beginning resident instruction, the institution shall pay a refund equal to the amount the student paid for the resident instruction multiplied by a fraction, the numerator of which is the number of hours of resident instruction that the student has not received but for which the student has paid and the denominator of which is the total number of hours of resident instruction for which the student has paid.

For the purpose of determining a refund under this section, a student shall be deemed to have withdrawn from a program of instruction when any of the following occurs:

- (1) The student notifies the institution of the student's withdrawal or of the date of the student's withdrawal, whichever is later.
- (2) The institution terminates the student's enrollment as provided in the agreement.
- (3) The student has failed to attend classes for a three-week period. For the purpose of subdivision (a) of Section 94869 and for determining the amount of the refund, the date of the student's withdrawal shall be deemed the last date of recorded attendance. For the purpose of determining when the refund must be paid pursuant to subdivision (b) of Section 94869, the student shall be deemed to have withdrawn at the end of the three-week period.
- (4) The student has failed to submit three consecutive lessons or has failed to submit a completed lesson within 60 days of its due date as set by an educational service offered by home study or correspondence. For the purpose of this paragraph, the date of the student's withdrawal shall be deemed to be the date on which the student submitted the last completed lesson.

An institution shall have the burden of proof to establish the validity of the amount of every refund. The institution shall maintain records for five years of all the evidence on which the institution relies.

An institution that meets each of the criteria in paragraph (1) shall be subject to the refund requirements in this section only for those students who withdraw from a course of instruction after having completed 60 percent or less of the course of instruction.

To qualify under this subdivision, an institution shall submit to the bureau a compliance report prepared by a certified public accountant, who is not an officer, director, shareholder, or employee of the institution, any parent corporation, or any subsidiary, prepared

pursuant to an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accountants, which states for a period of two years prior to the compliance report, the beginning and ending dates of which shall be determined by the bureau, the institution has:

- (A) Complied with Section 94824 or subdivision (b) of Section 94869 and with this section for refunds owed by the institution.
- (B) Complied with subdivision (b) of Section 94854 for each of the two years covered by the audit except that:
 - (i) The institution shall have an aggregate completion rate of 70 percent or more pursuant to paragraph (1) of subdivision (b) of Section 94854.
 - (ii) The institution shall have an aggregate placement rate of 80 percent or more pursuant to paragraph (2) of subdivision (b) of Section 94854.
 - (iii) As an alternative to clauses (i) and (ii), the institution shall have a combined aggregate completion and placement rate of 56 percent or more.
 - (iv) In attesting to the institution's compliance with the requirements of this subparagraph, the certified public accountant, at a minimum, shall review a random, statistically valid sample of the students to whom the institution owed a refund, the students counted by the institution towards its completion rate and its placement rate, and the students excluded from the calculation of the completion and placement rates, review the institution's placement log or files and contact students and employers to verify information in the placement records, whether the student was employed in the

which the training was represented to lead, and whether the student was employed for at least 60 days.

- (2) (A) The bureau shall review the compliance report submitted by the institution pursuant to this subdivision.
- (B) The bureau shall review any complaints against the institution by current or former students, any civil lawsuit in which the institution is a defendant or any lawsuit, action, charges, proceeding, or investigation by any government agency or any accrediting agency in which the institution is a party which were filed, pending, or resolved during the two-year period covered by the compliance report. After reviewing such complaints, lawsuits, actions, charges, proceedings, or investigations, as well as any other information available to the bureau and performing whatever other investigation it deems appropriate, the bureau shall make a determination, in writing, of whether the institution has materially violated Section 94831, 94832, 94834, 94853, 94859, 94860, 94866, 94868, 94869, 94870, 94871, 94873, 94875, 94881, or their predecessor sections, based on a preponderance of the evidence. The bureau's determination shall contain a summary of the evidence relied upon in making the determination and the sections for which a material violation exists. The bureau's determination shall have no probative value in connection with any lawsuits, actions, charges, or proceedings pending before any court or any other agency.
- (C) If the bureau determines that the institution has met all of the criteria in paragraph (1) and that no material violation exists pursuant to subparagraph (B) of this paragraph, it shall notify the institution that it qualifies under this subdivision. Following such notification, the refund provisions of this subdivision shall apply to the institution for a period of two years, unless revoked by the bureau.
- (D) If the bureau determines that the institution has not met all of the criteria in paragraph (1) or that a material violation exists

pursuant to subparagraph (B) of this paragraph, it shall notify the institution that it does not qualify under this subdivision.

- (E) The institution shall receive notice of any determination with a summary of evidence pursuant to this paragraph and, if requested in writing, a hearing. The institution may appeal the bureau's adverse decision under this paragraph. To the extent feasible, the bureau shall adopt regulations to provide for a streamlined appeal process for purposes of appeals pursuant to this subparagraph. Pending resolution of the appeal, the institution is not eligible to qualify under this subdivision. If the institution prevails on appeal, it may obtain relief limited to a determination that it is eligible for the refund provisions of this subdivision at the next time when it starts new students in its programs following the determination of the appeal. If the institution does not prevail on appeal, it may not seek to qualify under this subdivision for one year following the determination of the appeal.
- (3) Prior to notifying an institution pursuant to paragraph (2), the bureau shall adopt regulations to implement this subdivision, including regulations to establish the dates each year for submission of compliance reports by institutions, notification of institutions by the bureau of the applicable refund policy for the institution, the effective date of that refund policy, appropriate standards and procedures for conducting any review by a certified public accountant or any other person pursuant to this subdivision, including a description of the information and materials to be reviewed and appropriate standards for review which shall be based on the American Institute of Certified Public Accountants' Statements on Standards for Attestation Engagements.
- (4) (A) Any institution that has been notified by the bureau that it does not qualify for the refund provisions in this subdivision shall lose its qualification if the bureau determines either of the following:

- (i) The institution has materially violated Section 94831, 94832, 94834, 94853, 94859, 94860, 94866, 94868, 94869, 94870, 94871, 94873, 94875, or 94881, or has failed to meet the criteria in paragraph (1) during the period covered by the compliance report upon which the bureau based its determination of qualification.
- (ii) The institution has been found by any court or any other governmental agency in any proceeding, to have violated any of the provisions set forth in clause (i) and that violation was material or the institution has been found by any court or any other governmental agency in any proceeding, to have failed to meet the criteria in paragraph (1) during the period covered by the compliance report upon which the bureau based its determination of eligibility.
- (B) If the bureau, a court, or other governmental agency finds that the institution willfully supplied information required by this subdivision which it knew or should have known was inaccurate or misleading, the institution's approval to operate may be subject to termination, suspension, or probation.
- (C) The institution shall receive notice of any determination with a summary of evidence and, if requested in writing, a hearing prior to any action being taken pursuant to this paragraph. To the extent feasible, the bureau shall adopt regulations to provide for a streamlined appeal process for purposes of appeals pursuant to this subparagraph. Pending resolution of the appeal, the institution may not reapply pursuant to paragraph (9). If the institution prevails on appeal, it may obtain relief limited to a determination that it continues to qualify under this subdivision for the period of time covered by the bureau's most recent determination of qualification. If the institution does not prevail on appeal, the institution may not seek to qualify for the refund provisions of this subdivision for three years following the determination of the appeal and shall be subject to the refund requirements in subdivision (a), and not

the refund provisions in this subdivision, for all students who enrolled during the entire time period covered by the bureau's most recent determination of qualification.

- (D) The penalties in this paragraph supplement, but do not supplant, any other sanction or remedy allowed by law.
- (5) If an institution does not qualify under this subdivision because it fails to meet the requirement of subparagraph (A) of paragraph (1) by three students out of all students to whom it owed refunds during the period examined by the compliance report or 1 percent of all students to whom it owed refunds during the period covered by the compliance report, whichever is greater, the bureau may determine that the institution qualifies under this subdivision.
- (6) The certified public accountant shall submit any initial compliance report prepared pursuant to this subdivision to both the institution and the bureau. The institution shall submit any comments, suggested corrections, or exceptions to the initial compliance report to the certified public accountant and the bureau. The certified public accountant shall submit a final compliance report to both the institution and the bureau. The certified public accountant shall maintain possession of all work papers for a period of five years following completion of the final compliance report. The bureau shall make a copy of the compliance report available to any student, prospective student, or former student of the institution upon request.
- (7) If the bureau determines that the institution has met the criteria in this subdivision based on the information contained in a compliance report prepared by a certified public accountant pursuant to this subdivision, the following shall be deemed to be the intended beneficiaries of that compliance report:
- (A) The bureau.
- (B) The Student Aid Commission.
- (C) The United States Department of Education.

- (D) Any student who enrolls in the institution during the time period the institution qualifies under this subdivision.
- (8) In lieu of the attestation engagement referred to in paragraph (1), an institution that qualifies as a small institution under this paragraph may show that it has complied with each of the criteria in paragraph (1) pursuant to a review performed by the bureau, or any other alternative review that meets all of the requirements for an attestation by a certified public accountant pursuant to this subdivision which shall conform with the bureau's regulations. If the bureau performs the review requested by the institution, the institution shall pay the bureau all of its costs and expenses associated with conducting the review. The bureau shall, by regulation, define "small institution" for the purposes of this paragraph in terms of assets, number of students, gross revenues, other appropriate criteria, as determined by the bureau, or any combination thereof.
- (9) An institution may apply to the bureau for a renewal of the bureau's determination that the institution qualifies under this subdivision subject to the same terms and conditions as required for the bureau's initial determination.
- (10) If an institution qualifies under this subdivision, it shall disclose that refund policy in any disclosure, catalogue, notice, or agreement in which disclosure of a refund policy is required by this chapter. The institution may not state in any advertising, disclosure, catalogue, notice, or agreement that it qualifies for a "good school" or a "high performance" exemption, that it qualifies for a "good school" or "high performance" refund policy, or that it has been determined by the state to be a "good school" or a "high performing school," or use any similar words or phrases.
- (11) If a request for approval under this subdivision is filed concurrently with an initial or renewal application, no additional fees shall be charged. If a request for approval is not filed concurrently with an initial or renewal application, fees shall be charged as authorized by Section 94932 and the bureau's regulations.

§ 94871 **WRITTEN AGREEMENT REQUIRED; REQUIRED CONTENTS**

(a) No institution shall offer any program of instruction to any person, or receive any consideration from any person for a course of instruction, except pursuant to a written agreement as described in this section. Every agreement for a program of instruction shall provide the following:

- (1) A general description of the program of instruction and any equipment to be provided.
- (2) The total number of classes, hours, or lessons required to complete the program of instruction.
- (3) The total amount that the student is obligated to pay including all fees, charges, and expenses separately itemized that must be paid to complete the program of instruction. The total amount shall be underlined and shall appear immediately above the following notice, which shall be printed above the space on the agreement that is reserved for the student's signature:

"YOU ARE RESPONSIBLE FOR THIS AMOUNT. IF YOU GET A STUDENT LOAN, YOU ARE RESPONSIBLE FOR REPAYING THE LOAN AMOUNT PLUS ANY INTEREST."
- (4) The total amount charged for each item of equipment shall be separately stated. The amount charged for each item of equipment shall not exceed the equipment's fair market value. The institution shall have the burden of proof to establish the equipment's fair market value.
- (5) A schedule of payments.
- (6) The student's right to withdraw from the program of instruction and obtain a refund and an explanation of refund rights and of how the amount of the refund will be determined including a hypothetical example.
- (7) A detailed explanation of the student's right to cancel the agreement as provided in Section 94867.

- (8) If the student is not a resident of California, a clear statement that the student is not eligible for protection under, and recovery from, the Student Tuition Recovery Fund.
- (9) The following statement shall be printed in 12-point boldface type on the first page of the agreement: "If you have any complaints, questions, or problems which you cannot work out with the school, write or call the Council for Private Postsecondary and Vocational Education:

 (insert address and telephone number of the Council for Private Postsecondary and Vocational Education)"

- (b) Unless otherwise provided in subdivision (a), the institution shall provide the information required under Sections 94859, 94867, and 94868, in at least 10-point type in English and, if any solicitation or negotiation leading to the agreement for a course of instruction was in a language other than English, in that other language.
- (c) When a student is a client of a third-party organization and that organization pays all of the student's tuition and fees, the institution may substitute for the enrollment agreement required by this section a form provided to the student that contains the information required by subdivision (b) and paragraphs (1), (2), and (9) of subdivision (a). The form also shall contain a statement that students whose entire tuition and fees are paid by a third party organization are not eligible for payments from the Student Tuition Recovery Fund.

§ 94872 **TEST OF CAPACITY TO BENEFIT FROM INSTRUCTION**

- (a) An institution shall not enter into an agreement for a program of instruction with a student unless the institution first administers to the student and the student passes a test as provided in subdivision (b).
- (b) (1) The test required by subdivision (a) shall be a standardized test that is designed to measure and that reliably and validly measures the student's ability to be successfully trained to perform the tasks associated with the occupations or job titles to which the program of

instruction is represented to lead. The student's performance on the test must demonstrate that ability.

- (2) Nothing in paragraph (1) precludes an institution from using additional tests to determine a student's ability to be trained to perform tasks associated with the occupations and job titles for which training is offered as described in paragraph (1).
- (3) (A) If no standardized test is available that satisfies paragraph (1), the institution shall use other appropriate tests to determine the student's ability to be trained to perform the tasks associated with the occupations and job titles for which training is offered as described in paragraph (1). Within 30 days of determining that no standardized test satisfies paragraph (1), the institution shall so inform the council and shall describe and, if possible, furnish the council with the test to be used in lieu of the test required by paragraph (1).
- (B) Upon reasonable notice to the institution, the council may order the institution to demonstrate to the reasonable satisfaction of the council that the test and passing score are an appropriate measure of the student's ability to be trained to perform tasks associated with the occupations or job titles to which the course is represented to lead. If the test is not an appropriate measure, the council, after notice, and if requested, a hearing as provided in Section 94965 or 94975, shall order that the institution cease administering the test.
- (c) The institution shall have the burden of proof that the test complies with subdivision (b). If no minimum passing score is established by the test developer or if the minimum passing score used by the institution is below the minimum passing score established by the test's developer, the institution shall have the burden of proof that the student's achievement of the minimum passing score reasonably measures the student's ability to be successfully trained to perform the tasks associated with the occupations and job titles to which the course of instruction is represented to lead. The test shall be administered in accordance with the test's instructions, and time limits.

- (1) The test shall be completed solely by the student.
- (2) No institution or any person in any manner associated with the institution shall do any of the following:
 - (A) Answer any of the test questions.
 - (B) Read any of the test questions to the student.
 - (C) Provide any assistance whatsoever to the student in answering test questions. Nothing in this subparagraph prevents an institution from providing nonsubstantive assistance to accommodate the disability of a handicapped person otherwise qualified to take the test.
- (3) The test shall be given by the institution on its premises or by an independent testing service. The site requirement does not apply to an institution offering a home study or correspondence course.
- (4) If a prospective student has failed a test, the institution or the testing service that administered the test shall not administer another test to that prospective student for at least the period specified by the test developer or one week, whichever is longer. Any subsequent test administered by an institution to the same prospective student shall be a substantially different form of the same test or a substantially different test than the preceding test and shall satisfy the requirements of paragraph (1) or, if applicable, paragraph (3) of subdivision (b).

An institution's application for approval to operate shall do all of the following:

- (1) Identify the test used to comply with this section.
- (2) State the minimum score, if any, that the test's developer indicates a prospective student must achieve to demonstrate an ability to be successfully trained to perform the tasks associated with the occupations or job titles to which the course is represented to lead.

- (3) State the minimum passing score used by the institution.
- (4) If the institution accepts a lower minimum passing score than is indicated by the test's developer, state an explanation of why the institution accepts a lower minimum passing score.
- (f) The institution shall, for five years, retain an exemplar of each test administered by the institution pursuant to this section, an exemplar of an answer sheet for each test, a record of the passing score for each test, and the answer sheets or other responses submitted by each person who took each test.

§ 94873 **PROHIBITION AGAINST ENROLLMENT OUT OF SEQUENCE AND CHANGES IN SCHEDULE AFTER ENROLLMENT**

- (a) If a program of instruction is based on a sequence of classes, class sessions, or lessons and the learning experience to be derived from any class, class sessions, or lesson within the sequence is based in any manner on a student's attendance at or completion of a prior class, class session, or lesson, an institution shall not enroll a student in that program of instruction unless the instruction begins with the first class, class session, or lesson and proceeds in the appropriate sequence.
- (b) (1) If a program of instruction is based on a series of modules comprised of class sessions or lessons and the learning experience to be derived from any module is based in a manner on a student's attendance at or completion of, any class sessions or lessons in any other module, an institution shall not enroll a student in that course of instruction unless the student begins and proceeds in the appropriate sequence.
- (2) If a program of instruction is based on a series of modules comprised of class sessions or lessons and the learning experience to be derived from any module is not based on a student's attendance at or completion of, any classes or lessons in any other module, an institution shall only enroll a student in the program of instruction if the student begins with the first class session or lesson in a module.
- (c) Notwithstanding subdivisions (a) and (b), if a class or a module consists of more than 60 days of instruction, the institution may enroll a student to begin no later than the fifth class session of the first class or the fifth class session in the appropriate module.
- (d) The council, at any time, may determine whether the learning experience to be derived from any class session or lesson in a sequence of class sessions or lessons or from any module is based in any manner on a student's attendance at, or completion of, a prior class session or lesson in the sequence or any class sessions or lessons in any other module. The council may make the determination described in this subdivision upon the application of any person or when the council deems that a determination is appropriate. The institution shall have the burden to establish compliance with this section.
- (e) The institution shall not merge classes unless all of the students have received the same amount of instruction and training. This subdivision does not prevent the placement of students, who are enrolled in different programs of instruction, in the same class if that class is part of each of the courses and the placement in a merged class will not impair the students' learning of the subject matter of the class.
- After a student has enrolled in a program of instruction, the institution shall not do any of the following:
- (1) Make any unscheduled suspension of any class unless caused by circumstances completely beyond the institution's control.
 - (2) Change the day or time in which any class is offered to a day when the student is not scheduled to attend the institution or to a time that is outside of the range of time that the student is scheduled to attend the institution on the day for which the change is proposed unless at least 90 percent of the students who are enrolled consent to the change and the institution offers full refunds to the students who do not consent to the change. For the purpose of this paragraph, "range of time" means the period beginning with the time at which the student's first scheduled class session for the day is set to start and

ending with the time the student's last scheduled class session for that day is set to finish.

- (g) If an institution enrolls a student in a program of instruction that is not offered or designed as a home study or correspondence course at the time of enrollment, the institution shall not convert the program of instruction from classroom instruction to a home study or correspondence course.
- (h) An institution shall not move the class instruction to a location more than five miles from the location of instruction at the time of enrollment unless any of the following occur:
- (1) The institution discloses orally and clearly and conspicuously in writing to each student before enrollment in the program that the location of instruction will change after the program begins and the address of the proposed location.
 - (2) The institution applies for, and the council grants, approval to change the location. The council shall grant the application within 30 days if the council, after notice to affected students and an opportunity for them to be heard as prescribed by the council, concludes that the change in location would not be unfair or unduly burdensome to students. The council may grant approval to change the location which shall be subject to reasonable conditions, such as requiring the institution to provide transportation, transportation costs, or refunds to adversely affected students.
 - (3) The institution offers a full refund to students enrolled in the program of instruction who do not voluntarily consent to the change.

§ 94874 **MAINTENANCE AND PRESERVATION OF RECORDS;
INSPECTION OF RECORDS; CONFIDENTIAL
INVESTIGATIONS; PENALTIES FOR WILLFUL FAILURE TO
COMPLY**

- (a) Every institution shall maintain for a period of not less than five years at its principal place of business in California accurate records that show all of the following:

- (1) The names, telephone numbers, and home and local addresses of each student.
 - (2) The courses of instruction offered by the institution and the curriculum for each course.
 - (3) The name, address, and educational qualifications of each member of its faculty.
 - (4) The information required by subdivision (j) of Section 94859 and subdivision (b) of Section 94859.
 - (5) All information and records required by this chapter or the council.
- (b) All records that an institution is required to maintain by this chapter shall be immediately available by the institution for inspection and copying during normal business hours by the council, the Attorney General, the attorney or city attorney, and the Student Aid Commission.
- (c) An institution shall make available to a student, or a person acting on behalf of the student, all of the student's records, except for transcripts described in subdivision (d) and (e).
- (d) As provided in Section 94948, an institution may withhold a transcript or grades if the student is in default on a student tuition obligation.
- (e) If the student has made partial payment of his or her tuition obligation, the institution may only withhold that portion of the grades or transcripts that corresponds to the amount of tuition or loan obligation that has not been paid. If the course of study consists of only one course, the institution may withhold the grades or the transcript until the tuition or loan obligation is paid in full.
- (f) Each institution shall be deemed to have authorized the attorney or city attorney that accredited the institution to provide to the council, the Attorney General, any district attorney or city attorney, or the Student Aid Commission:

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- (d) No institution shall enter an agreement for a course of instruction with, or prepare or assist in preparation of a student loan or grant application for, a person solicited or recruited as described in subdivision (a) within three days of the date on which the person was solicited or recruited.
- (e) This section does not apply to solicitations or presentations made at informational public appearances directed to five or more people or to advertisements in print or broadcast media.

§ 94854 **MINIMUM PERFORMANCE STANDARDS; EFFECTS OF FAILURE TO MEET; RECORDS; AUDITS; INVESTIGATIONS**

- (a) Every institution shall meet all of the following performance standards for each program offered during the applicable time period described in subdivision (l):
- (1) Sixty percent or more of the students who began the program, did not cancel pursuant to Section 94867, and were originally scheduled at the time of enrollment to complete the course during that period shall complete it.
 - (2) Seventy percent or more of the students who completed the program within that period shall obtain employment starting within six months after completing the course in the occupations or job titles in which the course of instruction was represented to lead. For the purpose of this subdivision, "program" or "program of instruction" or "course" or "course of instruction" includes all courses of instruction, however denominated, that are represented to lead to the same or closely related occupations or job titles.
- (b) Every institution shall meet all of the following performance standards for all programs in the aggregate offered by the institution at each of its campuses during the applicable time period described in subdivision (l):
- (1) Sixty percent or more of all the students who began the programs did not cancel pursuant to Section 94867, and were originally scheduled at the time of enrollment to complete these programs during that time period, shall complete these programs.

- (2) Seventy percent or more of all the students who completed the programs within that time period shall obtain employment, starting within six months after completing the programs, in the occupations or job titles to which the programs of instruction were represented to lead.

- (c) For the purposes of subdivisions (a) and (b), students who, as documented by the institution, have been prevented from completing the program or programs of instruction due to death, disability, illness, pregnancy, military service, or participation in the Peace Corps or Domestic Volunteer Service shall be excluded from the computations used to determine whether an institution has met the performance standards prescribed by those subdivisions. Except as provided in Section 94874, an institution shall not disclose the records maintained pursuant to this subdivision unless production of those records are required by any law, subpoena, or court order, or are necessary for a certified public accountant to prepare a compliance report pursuant to subdivision (g) of Section 94870.
- (d) An institution shall meet the standards prescribed in subdivisions (a) and (b) at each site at which the program or programs are offered. A determination of whether a particular site meets the standards prescribed in subdivisions (a) and (b) shall be based only on students who attended that site. An institution shall be subject to subdivisions (f) and (g) only with respect to its sites that fail to meet the standards prescribed in subdivisions (a) and (b).
- (e) (1) This subdivision applies only to institutions in which 15 or fewer students began a program or programs, did not cancel pursuant to Section 94867, and were originally scheduled to complete the program or programs within the applicable time period described in subdivision (l).
- (2) If an institution described in paragraph (1) fails to meet any of the standards prescribed in subdivision (a) or (b), but would have met that standard if one additional student had completed or obtained employment, the institution shall be deemed to comply with this section. If an institution described in paragraph (1) fails to meet the standard for review established in subdivision (f), but would have

met the standard if one additional student had completed or obtained employment, the institution shall be deemed subject to subdivision (f).

- (f) (1) This subdivision applies only to an institution or any site that fails to meet any of the following:
- (A) Any of the standards established in subdivision (a) or (b) by 10 percent or less.
 - (B) Any of the standards established in subdivision (a), but has a placement rate of 42 percent or more for the course in which the standard was failed.
 - (C) Any of the standards established in subdivision (b), but has a placement rate of 42 percent or more for all courses in the aggregate.
- (2) If the institution's failure to meet the standards prescribed in subdivision (a) or (b) was not caused by a violation of this chapter, the council shall order, after notice and, if requested, after a hearing that the institution implement a program to achieve compliance with subdivisions (a) and (b). The program may include any of the following:
- (A) Limitations on enrollment for specific courses of instruction.
 - (B) Revision of admission policies and screening practices to ensure that students have a reasonable expectation of completing courses and obtaining employment.
 - (C) Increased academic counseling and other student support services.
 - (D) Improved curricula, facilities, and equipment.
 - (E) Revisions to the qualifications and number of faculty.

- (F) Improved job placement services, including revisions to the qualifications and number of job placement personnel and the expansion of contacts with employees and state and federal employment development agencies.
 - (G) Submission of a compliance report prepared by a certified public accountant, who is not an officer, director, shareholder, or employee of the institution, any parent corporation or any subsidiary, prepared pursuant to an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accounts, which states that the institution has complied with the performance standards in this section within the period set forth in paragraph (4).
 - (H) Any other reasonable procedure required by the council.
- (3) If an institution is subject to an order pursuant to paragraph (2), the council may require that the institution file information or reports requested by the council. The council may also monitor the institution in the manner provided in subdivision (d) of Section 94878.
- (4) (A) An institution subject to an order pursuant to paragraph (2) shall satisfy the standards established in subdivisions (a) and (b) within the period designated by the council. This period shall not extend more than one year beyond the length of the program for noncompliance with the standards prescribed by subdivision (a) or more than one year beyond the longest program for noncompliance with the standards prescribed in subdivision (b).
- (B) If the institution fails to satisfy the standards of subdivision (a) within the period designated by the council, the council shall order the institution to cease offering the course of instruction at the campus where that program was offered. If the institution fails to satisfy the standards of subdivision (b) within the period designated by the council, the council shall revoke the institution's approval to operate, or approval to operate the

branch or satellite campus where the programs were offered. No action shall be taken pursuant to this paragraph without notice, and, if requested by the institution, a hearing. In taking action pursuant to this subparagraph, the bureau shall consider the impact, if any, of changes in the employment rate in the area served by this institution.

- (g) If an institution fails to meet any of the standards established in subdivision (a) and does not have a placement rate of 42 percent or more for the program in which the standard was failed, the council shall order the institution to cease offering the program of instruction at the campus where the course was offered. If the institution fails to meet any of the standards prescribed in subdivision (b) and does not have a placement rate of 42 percent or more for all programs in the aggregate, the council shall revoke the institution's approval to operate, or approval to operate the branch or satellite campus where the programs were offered. No action shall be taken pursuant to this subdivision without notice and, if requested by the institution, a hearing.
- (h) (1) The institution shall have the burden of proving its compliance with this section.
- (2) The council shall investigate the institution whenever the council deems appropriate to verify the institution's compliance with this section. The investigation shall include an examination of the records maintained by the institution pursuant to subdivision (j) and contacts with the students and employers.
- (3) If an institution willfully falsifies, alters, destroys, conceals, or provides untrue or misleading information relating to compliance with this section, including records maintained pursuant to subdivision (j), the council shall revoke the institution's approval to operate. No action shall be taken pursuant to this paragraph without notice and, if requested by the institution, a hearing. This provision supplements but does not supplant any other penalty or remedy provided by law.

- (4) The institution shall pay all reasonable costs and expenses incurred by the council in connection with this section at a time designated by the council.
- (i) If the council, pursuant to subdivision (f) or (g), orders an institution to cease offering a program of instruction or revokes the approval of an institution to operate or operate a branch or satellite campus, the institution may apply, no sooner than two years after the order to cease or the revocation became effective, for approval to offer that program or for approval to operate. Before the council may grant any approval, the institution shall establish that it complies with this chapter, each program satisfies all of the minimum standards prescribed by this chapter, and the circumstances surrounding the institution's failure to meet the requirements of this section have sufficiently changed so that the institution will be substantially likely to comply with this section.
- (j) An institution shall maintain records of the name, address, and telephone number of students who enroll in a program of instruction, including students who begin the program and students who cancel pursuant to Section 94867, and of students who graduate from that program of instruction. An institution shall inquire whether students who complete a program of instruction obtain employment starting within six months of completing the program in the occupation to which the program of instruction is represented to lead and continue in employment for a period of at least 60 days. The inquiry shall be documented by a list indicating each student's name, address, and telephone number; the employer's name, address, and telephone number; the name, address, and telephone number of the person who provided the information regarding the student's employment to the institution; the name, title, or description of the job; the date the student obtained employment; the duration of the student's employment; information concerning whether the student was employed full-time or part-time including the number of hours worked per week; and the names, addresses, and telephone numbers of students who choose not to seek employment and instead enroll in another program to earn a higher degree, as well as the name and address of the institution in which they enroll. If the student is self-employed, the list shall include reliable indices of self-employment such as contracts, checks for payment, tax returns, social security contribution records, records of accounts receivable or

customer payments, invoices for business supplies, rent receipts, appointment book entries, business license, or any other information required by the bureau that is a reliable indicator of self-employment.

(k) For the purposes of this section, the following definitions shall apply:

(1) "Annual report" means the report required to be filed pursuant to Section 94861.

(2) (A) "Employment" means either of the following:

(i) Full-time employment for at least 32 hours per week for a period of at least 60 days in the occupations or job titles to which the program of instruction is represented to lead.

(ii) Part-time employment for at least 17.5 hours, but less than 32 hours, per week for a period of at least 60 days in the occupations or job titles to which the program of instruction is represented to lead, provided the student completes a handwritten statement at the beginning of the program and at the end of the program which states that the student's educational objective is part-time employment. The institution shall not require that any student complete such a statement or provide any incentive, financial or otherwise, to any student for signing such a statement.

(B) The bureau shall adopt regulations to specify the job tasks, other than those directly related to generating income, which may be counted towards meeting the hour requirements for full-time and part-time employment for students who are self employed.

(3) "Hearing" means a hearing pursuant to the requirements of either Section 94965 or 94975.

(4) "Placement rate" means the percentage of students who fulfilled the provisions of the following two subparagraphs:

(A) Began the program, did not cancel pursuant to Section 94867, and were originally scheduled at the time of enrollment to complete the program during the applicable time period described in subdivision (1).

(B) Completed the program, within the applicable time period described in subdivision (1) and started employment within six months of completing the program or, if employment requires taking a state licensure examination for which only graduates of the program may apply, then (i) started employment within six months of the date on which the state licensing agency announces the results of the first licensure examination reasonably available to students who completed the program, or (ii) started employment within six months of the next reasonably available licensure examination date for any student who did not receive passing results on the first exam. The time period determined pursuant to this subparagraph shall not exceed 10 months beyond the date of completion of the program of instruction. The institution shall retain a record of the date of the first reasonably available licensure exam following the completion date of each student, the date the licensure agency announces the results of the first reasonably available licensure exam, and the date of the next reasonably available licensure exam for each student who did not pass the first exam.

(5) "Reporting period" means the institution's fiscal year or any year period designated by the council to be covered in the institution's annual report.

(6) "Time period" means the two most recent calendar years that ended at least eight months before the end of the institution's applicable reporting period.

- (1) (1) An institution's compliance with the standards prescribed in subdivisions (a) and (b) shall be determined as of the date on which the institution's reporting period ends.
- (2) The institution shall report its determination of its compliance with the standards established in subdivisions (a) and (b) in each annual report.
- (3) The council may adjust the meaning of "time period" if the council finds that an adjustment is necessary for the efficient administration of this section. If any adjustment is made in the annual reporting periods, the council may adjust when the time period commences but shall not alter the two-year length of the period.
- (m) In determining the placement rate for a particular time period as described in subdivision (1), an institution may exclude from the determination a student whose completion date was extended beyond that time period if the extension was requested by the student in writing on an enrollment agreement modification request form that meets specifications established by the council. The form shall include instructions to the student indicating that, when signed by both the student and the institution, the request modifies the existing agreement. The form shall not be valid unless it provides space for the student to complete a handwritten description, in the student's handwriting, of the reasons necessitating the extension that are distinctly personal to the student and unrelated to the provision of educational services or activities of the institution, contains the new expected completion date of the program, and is signed and dated by the student and the institution. The institution shall provide the student a copy of the signed modification request form. The institution shall retain the student's original written request to modify the enrollment agreement with the original enrollment agreement. A student excluded from the placement rate determination for a particular time period pursuant to this subdivision shall be included in the placement rate determination for the next immediately following time period. The institution shall state in the institution's annual report the number of students for whom an extension was granted.
- (n) In determining the placement rate for a particular time period as described in subdivision (1), an institution may exclude from the calculation a student who either:
- (1) Decides not to obtain employment and within six months of completing the program enrolls in a program to continue his or her education to obtain a higher level degree that is related to, or provides for the student to use, the same skills or knowledge obtained in the program the student completed.
 - (2) Is in possession at the completion of the program of a valid United States Immigration and Naturalization Service Form I-20.
- (o) In determining the placement rate for a particular time period as described in subdivision (1), an institution may count a student who drops out of the program after completing at least 75 percent of the program because the student has obtained employment which lasts for a period of at least 60 days in the occupations or job titles to which the program of instruction is represented to lead. No more than 10 percent of the institution's total number of placed students may be counted pursuant to this subdivision.
- (p) If an order to cease offering a program or a revocation is issued pursuant to this section, the council may permit the institution to continue to offer the program or programs of instruction to the students who had begun the course or courses before the effective date of the order or revocation or may order the institution to cease instruction and provide a refund of tuition and all other charges to students.

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FINANCIAL RESOURCE REQUIREMENTS

- (a) As a condition of maintaining its approval to operate, an institution offering any educational programs or educational services subject to this article shall meet the following financial resource requirements in addition to the financial requirements of Section 94804.
- (1) Satisfy minimum standards prescribed by Section 94900, 94905, or 94915, whichever is applicable.

EXHIBIT E

Statement of

Thomas R. Bloom
Inspector General
U.S. Department of Education

Before the

**Subcommittee on Human Resources
and Intergovernmental Relations**

Committee on Government Reform and Oversight
United States House of Representatives

Regarding

**Gatekeeping
in the
Student Financial Assistance Programs**

June 6, 1996

Mr. Chairman and Members of the Subcommittee:

We welcome this opportunity to discuss the gatekeeping process for schools that participate in the federal student financial assistance (SFA) programs under Title IV of the Higher Education Act (HEA). The issue of gatekeeping -- that is, the process for screening institutions to participate in the SFA programs -- has been one of great concern to the Office of Inspector General (OIG) for many years. We firmly believe that it is vital to the efficiency of the SFA programs to have strong front-end controls like effective gatekeeping, rather than to rely on back-end, institutional monitoring and enforcement mechanisms. In the Department's testimony today, these two efforts are described as a single process. While they both perform important functions, the gatekeeping process exists to prevent marginal schools from ever participating or continuing to participate in the SFA programs.

The OIG has focused its work on non-degree-granting, vocational trade schools, because they have posed the greatest risk to the SFA programs in terms of fraud, waste and abuse. Therefore, my remarks will be directed to gatekeeping for those schools. Furthermore, based upon OIG's years of experience auditing and investigating the SFA programs, we believe that Congress should adopt a separate statutory and regulatory scheme for such schools, because they pose different challenges from the traditional academic schools for the administration of SFA programs. Indeed, the HEA already recognizes a distinction between degree-granting, higher education institutions and non-degree granting, vocational trade schools; only the latter are required to prepare students for "gainful employment in a recognized occupation."

I will urge in this testimony that reform of the gatekeeping process for the SFA programs be guided by this principle: WHAT YOU MEASURE, YOU GET. It is vitally important that we measure the right things in order to ensure that increasingly scarce taxpayer money is financing only quality training. Unfortunately, the way the SFA programs currently are designed, there are virtually no enforceable, quantitative measures that assure the quality of vocational trade schools that may participate in the programs. The result is that students and taxpayers are not always getting their money's worth for the \$8.8 billion spent annually on postsecondary vocational training.

Because the traditional gatekeeping mechanisms for the SFA programs have not assured the quality of the participating vocational trade schools, I will be advocating in this testimony that, with respect to the non-degree-granting, vocational trade school sector, Congress legislate consistent, measurable, objective standards which schools would have to meet in order to be eligible to participate in the SFA programs.

HISTORY OF PROMISED IMPROVEMENTS IN THE GATEKEEPING PROCESS

There has been a great deal of congressional testimony on the subject of gatekeeping, particularly leading up to the 1992 HEA Amendments. In 1990, then-Secretary of Education Lauro Cavazos told the Permanent Subcommittee on Investigation, Senate Committee on Governmental Affairs:

"We believe that focusing more on performance, strengthening standards for State Licensure, and improving the accreditation, eligibility and certification process will greatly improve quality amongst our postsecondary institutions. This has been and will continue to be a major emphasis of the Department's activity."

In October 1993, Assistant Secretary for the Office of Postsecondary Education, Dr. David Longanecker, promised the same Senate Subcommittee major improvement in the gatekeeping process by using authorities in the 1992 HEA Amendments to beef up the accreditation and certification processes, particularly with regard to the problem school sector -- nonbaccalaureate vocational institutions.

In July 1995, Assistant Secretary Longanecker again testified before the same Senate Subcommittee and promised a "new approach for oversight reform," a centerpiece of which was a targeting by the Department of resources in the gatekeeping area and elsewhere on "for-profit institutions providing short-term training."

Have the promised improvements materialized? In general, I can report that there has been improvement in those areas where Congress has legislated clear, bright-line standards or requirements for the Department to implement without much discretion, for example, the requirement for audited financial statements from participating schools. However, where the law has deferred to outside entities, such as accrediting agencies, to set and enforce standards, much more improvement is needed.

ACCREDITING AGENCIES -- RELUCTANT TO SET AND ENFORCE MEANINGFUL PERFORMANCE STANDARDS

Accrediting agencies are one-third of the tripartite gatekeeping process, along with the Department and the states. The accreditation process is conducted by private accrediting agencies, which under the HEA are to be determined by the Secretary to be "reliable authorit[ies] as to the quality of education or training offered" by institutions that participate in the SFA programs. Thus, under the current statutory scheme, accreditation is supposed to ensure the quality of training so that students and taxpayers get their money's worth from the training purchased.

History of Concern Regarding Accreditation Process

In testimony before congressional committees going back to 1990, OIG has repeatedly expressed its concern that the accreditation process does not reliably ensure institutional educational quality for vocational trade schools.

The Senate Permanent Subcommittee on Investigations, which had held extensive hearings on weaknesses in the SFA programs, issued its report on Abuses in Federal Student Aid Programs in May 1991. The report recommended that accrediting agencies be eliminated as a part of the gatekeeping process unless, under the leadership of the Department, the agencies dramatically improved their ability to screen out substandard schools. The report further recommended that the Department "should be required to develop minimum uniform quality assurance standards, with which all recognized accrediting bodies that accredit proprietary schools must comply. The Department should be responsible not only for formulating those standards, but also for developing and carrying out a meaningful review and verification process designed to enforce compliance with those standards. If the Secretary determines that an accrediting body does not or cannot meet these requirements, recognition should be terminated."

1992 HEA Amendments

In the 1992 HEA Amendments, Congress sought to address the need for specific accreditation and institutional performance standards. Section 496 directed the Department to establish standards for recognizing accrediting agencies as reliable authorities as to the quality of education or training offered. The 1992 HEA Amendments also required the accrediting agencies to have institutional review standards in twelve areas. While many of these areas were previously included in the law, the required standards for student outcomes were a new addition. In fact, the law stated that "such standards shall require that" accrediting agencies assess institutional "success with respect to student achievement in relation to its mission, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates."

We believe that by requiring the Department to "set standards" for evaluating accrediting agencies in specified areas, Congress was directing the Department to put meat on the bare-bones statutory language in order to ensure that the agencies had meaningful, quantifiable and enforceable standards for their member schools.

Department Action Since the 1992 HEA Amendments

It appeared that the Department was on the same track when Assistant Secretary Longanecker told the Senate Subcommittee on Investigations in 1993, in reference to the proposed regulations:

"The Department will soon publish proposed regulations for recognizing accrediting agencies . . . which will make it clear that the accrediting agencies are accountable for the schools they accredit . . . [A]ccrediting agencies will be required to have meaningful standards for assessing an institution's fiscal and administrative capabilities, recruiting and admissions practices, measures of program length and student achievement, and program completion, job placement, and default rates. . . . These regulations would also require accrediting agencies to take followup action when a school fails to meet those standards."

In our opinion, the Department's final accrediting agency regulations did not fulfill this promise. The final regulations simply restated the statutory language of the 1992 HEA Amendments without giving the accrediting agencies additional direction for setting meaningful standards or requiring that those standards be enforced against member schools that do not meet them. The stated rationale was that the Department must regulate "closely to the law" to avoid "regulation-driven management." In addition to the Department's efforts to minimize regulation, the accrediting agencies expressed an unwillingness to develop and enforce meaningful, objective standards because of their belief that it would inappropriately make them federal regulators. This demonstrates why we believe Congress must legislate measurable and mandatory

performance standards and not rely on the Department or the accrediting agencies to do so.

We believe that the Department's regulations are not what the 1992 HEA Amendments contemplated; nor will they enable the Department to attain clear, measurable and binding performance standards to help meet the requirements of the Government Performance and Results Act of 1993 (GPRA). The GPRA mandates federal program accountability by requiring federal agencies to establish performance goals that are objective, quantifiable and measurable by fiscal year 1999. The Department currently must rely on accrediting agencies to establish and enforce such performance goals. However, without assessing the institutional performance data collected by the agencies from member schools, the Department's ability to comply with the GPRA may be significantly jeopardized.

Post-1992 HEA Amendments OIG Audit Work

To assess whether the accrediting agencies were in fact developing performance standards for student achievement, as contemplated by the law and the Department's regulations, the OIG in 1994 conducted on-site reviews of five agencies that accredit institutions providing vocational training programs which receive SFA funds. Our May 1995 audit report concluded that the five accrediting agencies generally were not using performance measures to assess and improve the quality of

education offered by member schools. Since our report, on-going, follow-up work reflects that some accrediting agencies have adopted or are now developing performance standards. However, the accrediting agencies expressed their reluctance to do so and said that they want and need more direction in the law itself as to what the appropriate standards for schools should be for purposes of participation in the SFA programs.

The accrediting agencies we reviewed treated the standards only as "goals" that the schools should try to meet rather than as enforceable standards that serve as a basis for withdrawing accreditation of substandard schools. For example, the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS) offered what it called "outcome guidelines" as fulfillment of the requirement for performance standards during the re-recognition process. To its credit, the Department staff criticized NACCAS for not having enforceable standards and directed NACCAS to call its guidelines "standards" and enforce them. While this is encouraging, the Department's regulations give accrediting agencies considerable leeway in enforcing their standards. Without enforceable standards, schools that fall short of their own accrediting agency standards -- even in such basic areas as graduation and job placement -- may continue to be accredited and continue to participate in the SFA programs. Since what you measure you get, without measurement and enforcement of even these basic standards for student achievement, we cannot assure that vocational trade schools in

the SFA program will consistently graduate and place the bulk of their students in jobs for which they were trained.

For example, our 1993 Management Improvement Report entitled "Title IV Funding for Vocational Training Should Consider Labor Market Needs and Performance Standards" reported that in one instance, a cosmetology school in Louisiana received over \$2.8 million in SFA program funds for the 673 students enrolled over a period of approximately 3.5 years. Of the 673 students, only 19 students actually received state cosmetology licenses, at a cost to the taxpayers of almost \$148,000 per license. While we do not mean to suggest that this is the norm, our investigations and other studies have revealed similar or even more egregious examples. I submit that had there been performance standards for vocational trade schools that included licensing exam pass rates and job placement, this shocking waste of federal funds may not have occurred.

In our 1995 audit report on accrediting agency performance standards, we recommended that the Department evaluate accrediting agency standards and procedures for measuring the quality of member schools and the success of their programs, particularly with respect to job placement. We also recommended that the Department require the agencies to verify the accuracy of performance outcomes reported by schools and hold schools accountable for unsuccessful training programs. We recommended further that the Department develop a process to collect and compile

reported performance data from accrediting agencies. The data could not only be used to monitor the success of accrediting agencies on an ongoing basis, but it is essential in order for the Department to assess program success in accordance with the GPRA.

The Department's program office did not completely agree with our audit report, and we have elevated the matter within the Department to the Office of the Chief Financial Officer for resolution. The fundamental disagreement concerns the requirements of the 1992 HEA Amendments regarding performance standards for student achievement. We believe the performance standard for student achievement must be numerical and absolute to be both meaningful and enforceable. We also believe that accrediting agencies must enforce their standards so that substandard schools do not remain accredited. The Department has taken the position, on the other hand, that the performance standards do not have to be absolute or numerical; that the standards could be goals that schools should work to, but may never achieve; and that agencies could develop subjective standards to be applied on a case-by-case basis to assess schools that do not meet the standards within specified time frames.

The Department also did not agree with our recommendation that it develop a process to collect and compile performance data from accrediting agencies. The Department expressed concern that it did not have the resources to develop and operate a system to collect and compile the performance data. We continue to believe that it is not enough to simply require accrediting agencies to measure performance.

The Department needs to know how well its Title IV funded vocational training programs are doing so that it can better manage the programs and demonstrate compliance with the GPRA.

Legislative Standards Needed

There has been a statutory requirement for accreditation standards for student achievement since July 1992, and a regulatory requirement effective since July 1994. Yet, we are only now beginning to see a handful of accrediting agencies establish performance standards, and accrediting agencies are not using their standards to terminate the accreditation of poor quality schools. In light of this reluctance on the part of accrediting agencies to engage in objective, quantitative evaluation of student achievement at their member schools, and the Department's reluctance to require that the performance standards be absolute, we recommend that Congress incorporate performance standards directly into the law, at a minimum for non-degree-granting, vocational trade schools. Since what you measure you get, these legislative standards should measure what Congress believes students and taxpayers should get from vocational training being financed with federal dollars.

As previously stated, a vocational trade school is allowed to participate in the SFA programs only if it "provides an eligible program of training to prepare students for gainful employment in a recognized occupation." Therefore, I submit that the most important performance standard should be

the number of students who obtain jobs in the field for which they were trained. If students who are trained at a particular vocational school are getting jobs, then Congress and the taxpayers can be relatively certain that the quality of the training is good.

Congress has mandated job placement performance standards before. The 1992 HEA Amendments required that programs of less than 600 clock hours have a verified completion rate of at least 70 percent and a verified placement rate of at least 70 percent. Even this is a modest standard, requiring that only one of every two students enrolled get a job. We believe that Congress should seriously consider a similar provision as a gatekeeping mechanism for all non-degree-granting vocational programs that receive SFA funds.

It is important to recognize that not all measurable statutory requirements are meaningful in assuring institutional quality. For example, the current HEA measures course length, but this does not ensure quality training. In fact, our past reviews disclosed that, in some instances, courses were stretched in order to meet the statutory course length requirement for participation in the SFA programs. Furthermore, course length requirements may actually increase the cost of training unnecessarily.

Past experience has shown us that legislative mandates of bright-line, quantitative standards are the most effective means of bringing about real, systemic

reform, rather than relying on the administrative process. Because there is tremendous pressure for deregulation in administering federal programs, the Department has been, and may well be in the future, reluctant to promulgate regulations that go beyond what the authorizing statute minimally mandates, as was the case with the current accrediting agency regulations. Bright-line statutory standards are important because, with fewer resources to administer these complex financial programs, the Department cannot do so efficiently and effectively when there are exceptions and mitigating factors that must be considered on a case-by-case basis. For example, the student loan default rate significantly declined between 1990 and 1993 after Congress promulgated default reduction provisions that required the Department to terminate the Federal Family Educational Loan Program eligibility of institutions having cohort default rates over specific numerical thresholds.

CERTIFICATION/ELIGIBILITY -- LEGISLATIVE REFORMS LEAD TO IMPROVEMENT

An example of the successful use of clear, bright-line legislative mandates occurred in another area of the gatekeeping processes. In the HEA Amendments of 1992, Congress set forth specific criteria for the Department to use in its financial and administrative certification of institutions participating in SFA programs. As a result, we have noted significant improvements in the Department's certification process.

History of IG Concern Regarding Certification Process

Our office issued two audit reports in 1989 and 1991 which addressed the Department's financial and administrative certification processes. At that time, we reported that the Department's certification procedures did not prevent deficient institutions from participating in SFA programs and did not protect student and government interests in the event of school closure. Moreover, nominal surety arrangements were used for the purpose of providing a mechanism for allowing almost any school to be certified to participate in the Title IV programs. In addition, the Department's administrative certification process placed too much reliance on the integrity of institutions in the preparation of certification applications, because the Department did not validate the information. We further found that institutions were routinely certified and recertified despite indicators of administrative capability problems such as high withdrawal and default rates.

1992 HEA Amendments

In the HEA Amendments of 1992, Congress added significant financial responsibility requirements for participating schools. Most importantly, all schools were required to have an annual independent financial statement audit submitted to the Department. Schools also were required to meet more stringent financial criteria for them to be considered financially responsible by the Department. The Amendments further added a 50-percent surety requirement for any institution that failed to meet the new financial responsibility criteria.

Post-1992 HEA Amendments OIG Audit Work

To determine the impact of the 1992 HEA Amendments on the Department's certification process, we conducted a follow-up review last year to evaluate the deficiencies we had reported in our previous audit reports. We concluded that the Department had implemented many of the requirements contained in the 1992 Amendments, and improvements were evident in the recertification process. In particular, the Department's implementation of the annual financial statement audit requirement significantly improved the certification screening process. However, we have been unable to verify the Department's stated increase in certification rejections because the Department cannot provide our office with the specific names of the institutions that have been rejected.

Our 1995 review also revealed that there were certain key areas where corrective action had not been completed. The 1992 HEA Amendments contained an additional requirement that the Department recertify all schools participating in SFA programs by July 1997 and then repeat the recertification every four years thereafter. Due to the large number of recertifications required and the limited number of staff available to

conduct the reviews, it is our opinion that the Department will not be able to finish the recertification of participating institutions within the statutorily mandated time frame. If the recertification process is not completed as required, it could result in ineligible institutions receiving SFA funds. To complete the recertification process in a manner that will minimize the risk to the Department, we recommended that the recertification of institutions be prioritized by first reviewing institutions that present the highest risk and then restructuring the process to streamline the recertification of the remaining institutions. The Department generally agreed with this recommendation.

Our follow-up review further revealed that the Department continues to have problems in maintaining and tracking its files on institutions. We recommended that the Department reevaluate its staff resources to determine how best to accomplish the file custodian's responsibilities. We further recommended that the Department consider the feasibility of scanning all institutional documents into an electronic database.

OIG is currently conducting another review of the Department's recertification process. For the high-risk institutions, we are questioning some of the Department's individual recertification decisions because of deficiencies in the financial responsibility and/or administrative capability of the institutions. The matter is the subject of internal debate with the Department at the current time.

Overall, we believe that the Department is making progress in its certification process, primarily because Congress provided the Department with specific requirements in the 1992 HEA Amendments. One area we intend to address in the near term is the Department's application of the new provisional certification

process authorized by the 1992 HEA Amendments. Provisional certification permits a marginal school to remain eligible to participate in SFA programs under certain restrictions. We will be examining the Department's handling of schools on provisional certification upon the expiration of their provisional certification period.

Institutional Eligibility Determinations

We also have some concerns about the Department's ability to implement new school eligibility requirements that appeared in the 1992 HEA Amendments. In the past, a school generally met the Department's eligibility criteria if it was licensed and accredited. The 1992 HEA Amendments added additional eligibility criteria such as the 85/15 rule (for recertification) and the 50-percent restriction on the number of students admitted on the basis of ability-to-benefit rather than high school credentials. We strongly support these clear absolute standards, and we believe that the Department must assure its current eligibility review staff establish procedures to ensure that schools are adequately evaluated under the new eligibility requirements.

THE STATES -- LICENSURE STILL GENERALLY INEFFECTIVE AS A NATIONAL GATEKEEPING MECHANISM

State licensure is a third part of the triad of gatekeeping mechanisms provided for by the HEA. It has been generally recognized for some time that state licensure does not assure a consistent level of quality for institutions participating in the SFA programs, because of the wide variation among the states as to their licensure procedures. In the 1992 HEA Amendments, Congress contemplated a greater role for states by providing for new State Postsecondary Review Entities -- SPREs -- which would have been responsible for establishing acceptable measures for student achievement for schools participating in the SFA programs and for monitoring problem

schools in their states. However, funding for the SPREs was eliminated in 1995, and therefore the state role in gatekeeping remains ineffective.

One reason the SPREs were not funded is because of opposition from the higher education community as a whole. We believe that Congress should reexamine the SPRE concept as a gatekeeping and monitoring mechanism for non-degree-granting vocational trade schools only.

We also believe there are other ways that states could have a role in the gatekeeping process. The OIG examined workforce development initiatives underway in six state offices responsible for overseeing state-supported vocational training. We found some states had made significant progress in developing strategies for coordinating and measuring the effectiveness of their job training programs. A key component of the strategies is the targeting of training for high-demand jobs and the use of performance measures. Although these agencies were not part of the state role in the program triad, we think these are exactly the strategies that were envisioned in the GPRA.

In August 1995, we recommended in a report to the Department that it study the feasibility of conducting a pilot project in one or more of those states with advanced workforce development programs. The Department did not disagree, but took the position that it was premature to implement pilot projects.

DEPARTMENT'S CURRENT GATEKEEPING INITIATIVE

In congressional testimony in July 1995 regarding fraud and abuse in the federal student aid programs, Assistant Secretary Longanecker testified as to the ongoing improvements in the gatekeeping and oversight of schools, and unveiled a new approach to ensure the integrity of these programs. The new approach is to differentiate between schools based on the level of risk they pose to the integrity of the programs. Departmental resources would then be redirected from the monitoring of the low-risk schools to an intensified focus on the high-risk schools, which he defined generally as for-profit non-degree granting institutions.

Following the testimony, the Department convened a meeting of its senior officers in an effort to decide what needed to be done to accomplish this effort. We were encouraged by the open discussion of the problems and looked forward to continuing to assist the Department in this much needed and long overdue effort.

Subsequent to the initial meeting, the Department established a steering committee on oversight and monitoring to continue this effort. Although we are aware of Departmental efforts such as the IPOS Challenge, to improve its processes for dealing with the high-risk schools, we are concerned that the Department's plans to

provide regulatory relief for the low-risk schools have become the top priority of the steering committee, rather than the increased oversight of high-risk schools.

We believe implementation of the current proposal for deregulation will require the reallocation of limited resources. We are concerned that this reallocation will divert resources from dealing with the high-risk schools. While we are not opposed to deregulation for the low-risk schools, we believe the Department's top priority should be addressing the high-risk problem schools, those that have called into question the integrity of the student aid programs.

This concludes my remarks. I will be happy to answer any questions you may have.