



# Regulation Update

Act passed 2009

Old Degree Granting Regulations from BPPVE

Amended by Legislature 30 times since 2010





# When to Regulate?

- Legislative Act commands it
- Act is “unclear” as to Statutory Intent
- Regulator wants to move the Act in a different direction
- Regulator wants to clamp down on Regulated Community behavior
- Underground Regs are discovered, and Regulator moves to make them official
- Make law “easier” to understand?



# The Regulation Approval Dance

- Traditional Regulators give from 3 days (emergency Regs) to 3 months for the Regulated Community to Comment
- Once a Regulation is published, very difficult to convince the Regulator to change their mind (see GE Reg comments)
- If possible, better to engage Regulator prior publication of regs but it requires
  - access to the draft regs,
  - an opened minded Regulator
  - and some knowledge of the regulated community to understand their concerns. This rarely happens



# Siren Call of the OAL (Office of Admin Law)

- Once time for comment expires the Regulator in Ca ships their proposed Regs off to OAL for approval
- Regulated Community has an opportunity to write their objections to the Regs based on specific criteria published by the OAL.
- Most common objections to Regs center around the issue of “Clarity” (reg v statute not clear what Regulator is doing)
- OAL will meet with you on occasion and even more rarely reject the proposed regulations (CAPPS has been successful on this issue)
- Regulators will usually revise the regs to obtain OAL approval



# When to Litigate Regs

- Legislators often know and don't care if their legislation violates existing laws
- Regulators sometimes take similar approaches
- Good Regulators sometimes try to promote follow on Legislation to fix violations but that is rare and difficult if your part of an Administration that signed the law in the first place.
- If the final Reg is so bad that you (and others) believe it will have a major negative effect on your business and Institution, then consider litigation. (CAPPS V BPPVE Special STRF Assessments)



# Death by Thousands of Cuts (Regs)

- Governing Act Legislatively Amended 30 times over 25 years. Hundreds of new Regulations added to “implement” those 30 bills.
- Is there a limit to what a sector can stand? HEA, Accreditors, States cumulatively create large burdens on Schools and business.
- Judgement call can be by one school (the Ability to Benefit case)
- Or Associations based on member input.



# Current BPPE Proposed Regs

- The current regulatory language states that an institution may renew an Approval to Operate within 6 months after expiration by filing a renewal application and paying a fee.
- Regulations do not explicitly provide for approval to continue to operate after the date of expiration of an Approval to Operate.
- Existing regulatory language is confusing for institutions and gives them the “mistaken” impression that it is ok to be late.
- BPPE proposes to eliminate the 6-month grace period (with fines) and terminate your approval if it is more than 30 days late.



# Let's Talk Issue of “late” and the BPPE

- Anyone know why the Bureau included 6 months extension to submit an approval?
- Reasons: They love us and want to help in any way?
- They were so backed up that 6 months did not affect their approval process at all?
- They traded more time for schools for less criticism on approval times by the BPPE?
- CAPPs dropped mandatory state-imposed approval requirements for the BPPE in proposed legislation?



# Why Now for Revised Approval Regs?

- What do you do when you have the worst approval times of any Agency in California for the last several years?
- Revamp and streamline your approval process?
- Eliminate unnecessary internal processes and duplication of effort?
- Diversify approval management to increase number of “final” approval staff at BPPE.
- Speed up approval submissions by Schools!!



# What is your Date of Approval?

- Is it ever the same date twice in a row?
- Approval dates are not fixed and certain so tracking procedures are needed. How many schools do this?
- Bureau has refused to notify schools that their approval dates are approaching. (no capability)
- A bigger hammer might work better so after thirty days late and no submitted approval by school, you are done!
- Off to submit a new approval to the Bureau (with fees) and no offering classes until new approval is obtained.
- And the BPPE approval rate just got a whole lot better!



# TIPS for dealing with Regs

- Review them as they are listed on the BPPE Website
- Schedule a meeting with compliance staff and managers to determine what impacts the regs will have on operations
- Write letters and emails about your concerns to CAPPS, the Regulatory Agency and top management
- Consider objecting to the Office of Administrative Law (their website gives information on status of proposed Reg.
- Some regs are inconsequential, Some are awful
- Make sure you comment on the Bad Regs, it is useful in the long run