

**Hawai'i State House of Representatives
Committee on Consumer Protection and Commerce**

Monday, February 11, 2013

HB 1200 HD1 – Relating to Education

Chair McKelvey, Vice Chair Kawakami and members of the committee:

University of Phoenix is in strong support of HB1200 HD1 which would create a framework for authorizing post-secondary education institutions which operate within the state. This legislation, which is the culmination of a two-year process including a State Auditor's Sunrise Review, is critical to ensure that many higher education students in Hawai'i continue to have access to federal financial aid. University of Phoenix serves approximately 4,000 Hawai'i residents and has three physical locations in the state.

On October 29, 2010, the United States Department of Education published final regulations concerning a range of program integrity issues tied to Federal Student Financial Aid as administered under Title IV of the Higher Education Act, as amended. Most of these regulations went into effect July 1, 2011. Included for the first time were specific federal requirements for state authorization of institutions of higher education whose students are eligible for Title IV funds.

In order for a college or university to be legally authorized by a state for Title IV eligibility purposes, the state must have a process to review and appropriately act on complaints concerning the institution. The process must include enforcing applicable state laws. Additionally, the institution must meet the minimum requirements for state authorization in one of the following ways:

- The institution is established by name as an educational institution by a state through a charter, statute, constitutional provision, or other action issued by an appropriate state agency or state entity authorized to operate educational programs beyond secondary education; **and**
- The institution complies with any applicable state approval or licensing requirements, except that the state may exempt the institution from any state approval or licensure requirements based on the institution's accreditation by one or more accrediting agencies recognized by the Secretary of Education or based upon the institution being in operation for at least 20 years; **or**
- An institution established by a state on the basis of authorization to do business or to operate as a non-profit, must be approved or licensed by name by the state and may not be exempt from state approval or licensure based upon years of operation, accreditation, or other comparable exemption.

At the time the U.S. Department of Education finalized the regulations, it recognized the July 1, 2011 effective date may not be obtainable. Accordingly, the regulations allowed a state to request a one (1) year extension of the effective date to July 1, 2012 and if necessary, an additional one (1) year extension to July 1, 2013. Hawai'i requested and was granted the extensions to July 1, 2013 and now must act to put in place acceptable procedures to meet the Department's oversight and approval requirements and authorize institutions as required under the federal rules by June 30, 2013. We sincerely appreciate the Committee's willingness to consider the legislation so early in the year, given that the bill needs to be signed into law a structure needs to be in place, and institutions must be authorized prior to the July 1, 2013.

According to the December 2012 "Study of the Higher Education Act" from the Auditor of the state of Hawai'i, approximately 63,000 students in the state received more than \$283,000,000 in Title IV funds in fiscal year 2011. In the event the deadline is not met, a great number of college students in the state of Hawai'i are in jeopardy of losing the ability to participate in federal Title IV Federal Student Aid programs and, effectively, to continue their post-secondary education. Although we are not proponents of additional regulation, we understand the need to address the federal regulations regarding state authorization in order to ensure Hawai'i's students remain eligible for Title IV funding. We feel this bill accomplishes that purpose without being overly burdensome as many of the provisions are similar to requirements we already comply with in other states.

Thus, we would strongly urge you to move this much needed legislation forward. If you have any questions, please feel free to contact Joe Gregorich, Associate Vice President, State Government Affairs at 916-228-4495; joseph.gregorich@apollogrp.edu or Chris Fagan at 602-557-8302; christopher.fagan@apollogrp.edu.

Thank you for the opportunity to testify.

TESTIMONY of HEALD COLLEGE

HB 1200



Before the

House Committee on Commerce and Consumer Protection

11 February 2013

Chairman McKelvey, and Committee members, I am **Evelyn Schemmel**, president of Heald College's campus in Honolulu. My institution has a long history here, beginning with its founding as Honolulu Business College in 1917, as well as Cannon's School of Business in 1934. It became part of the Heald College system in 1993.¹

Scope of Bill is too Wide and Would Impose Unexamined Administrative Duties.

We believe this bill should be significantly narrowed in scope to address the issue at hand, which is the need to comply with the changes made to the US Department of Education's (ED) **State Authorization** rule. Without making these changes, postsecondary institutions in the State could lose their status as "eligible institutions" for purposes of the federal Higher Education Act, and students would not be able to use their Title IV student financial aid at these institutions.

The bill as it now stands would go far beyond this goal, and while the additional policy objectives contained in the bill might be beneficial, they have not been, in our opinion, subjected to the necessary level of analysis and deliberation required of a piece of legislation introducing such significant change and expansive new governmental duties.

It seems that many are supporting this legislation because it is the only current bill that addresses the State Authorization issue, and they are fearful that since it took two years to get to this point, this is the only means to address this issue. We believe the bill should be amended to solely address the State Authorization issue, and leave the other policy objectives for further analysis and deliberation. If deemed appropriate and beneficial they should be enacted in future legislation.

Is Colorado's Degree Authorization Act Right for Hawaii?

The bill's text is a verbatim copy of the Colorado **Degree Authorization Act** (DAA). While this may be an appropriate law for the state of Hawaii there has been no study or analysis done to judge if this is true or correct, and would work within the context of Hawaii's post-secondary education sector, as well as within the state's executive branch administrative structure.

In Colorado, the DAA is administered by the **Colorado Department of Higher Education**, which is an administrative agency with personnel, processes and expertise to faithfully carry out the duties

mandated by the Act. There is no such agency in Hawaii, and this an important indicator of the probable success of the program outlined in this bill.

In fact, the bill would make the **Department of Commerce and Consumer Affairs** (DCCA) responsible for the implementation of the legislation. The Department has stated in prior testimony that “the state can ill afford ... to stand up a brand new program within a department [DCCA] [sic] has no expertise in education and no familiarity with the Higher Education Act.”

In addition, the **Department of Budget and Finance** calls into question the funding mechanism in the bill. In testimony, its director stated, “it is difficult to determine whether the proposed source of revenue will be self-sustaining. I encourage the Legislature to scrutinize the fiscal and operational plan for this program to ensure it does conform to the requirement of Section 37-52.3, Hawaii Revised Statutes.” Unfortunately, to our knowledge, this scrutiny has not been undertaken.

What is Necessary to Comply with ED’s New State Authorization Rule?

In 2010, ED changed the longstanding rule concerning State Authorization, which is part of regulations concerning Federal student financial aid made available through **Title IV** of the **Higher Education Act**. These aid programs include Pell grants, Stafford Direct loans, and similar programs.

Up until now, the State of Hawaii has seemingly not seen a need to have a state authorization process, but because of this rule change it will need to act to allow institutions in the State to continue to participate in these programs. This rule change impacts both public and private institutions, but in somewhat different ways.

Postsecondary institutions must meet three requirements to become “eligible institutions.” These three requirements are:

1. State authorization
2. Accreditation by an accreditor recognized by the US Department of Education, and
3. Certification by the US Department of Education of the institutions capability to administer Title IV programs.

The new rule introduces two new features in the state authorization requirement:

1. A state process to review and appropriately act on complaints concerning institutions, and
2. A state process to approve or license an educational institution by name authorizing it to offer educational programs beyond secondary level.²

The US Department of Education has released guidance on this rule that offers a path to where we believe this legislation should end-up. As the department has advised, the approval or license activity can be of a minimal nature. For instance, an institution can comply with the new rule by being incorporated in the state by name, and in its articles of incorporation state its purpose as postsecondary education.³ For some institutions in Hawaii this route is already available.

For others, because they are incorporated or organized in another state, this route is unavailable, and another approval process is necessary. We would suggest that this alternative process be a mirror image of the corporation registration process, whereby the institution applies to the Department of Commerce and Consumer Affairs (DCCA), or even the currently constituted State Postsecondary Education Commission, for approval. The application can require similar information as required on the articles of incorporation form, plus evidence of accreditation by a US Department of Education recognized accreditor, and so forth.

Since only institutions who are accredited by a US Department of Education recognized accreditor will seek or need this approval, the State can rely on this accreditation as the quality assurance for which it is recognized.

To satisfy the other requirement, the complaints process can be carried out by DCCA's Office of Consumer Protection, a service which the office already provides for other matters, or be left at the State Postsecondary Education Commission, as now authorized by law.

An Example from Washington State.

The following is an example of a bill introduced recently in the Washington State legislature to cover some postsecondary institutions that offer career education. This language has been reviewed for its compliance with the State Authorization rule. As is apparent it is a short bill.

HB 1683

Sec. 1. It is the intent of the legislature to maintain and expand access to postsecondary education and improve opportunities for students. The legislature recognizes that access to federal financial aid is a major avenue for overcoming financial barriers to higher education for many students in Washington. The legislature recognizes that recent federal law changes require the adjustment of definitions of certain postsecondary institutions in state statutes to ensure that those schools that currently meet the requirements are eligible for student financial aid programs provided by the federal government.

Sec. 2. A new section is added to chapter 18.16 RCW to read as follows:

Schools shall be recognized as institutions of post-secondary study under the following conditions:

(a) The school admits as regular students only those individuals who have earned a recognized high school diploma or the equivalent of a recognized high school diploma, or who are beyond the age of compulsory education in the state; and

(b) The school is licensed by name by the department under RCW 18.16 to offer one or more training programs beyond the secondary level.

We Stand Ready to Assist the Committee

Again, we appreciate the attention that has been given to this issue, which is so important to our students and our institutions. We stand ready to aid the author and the committee to help formulate a narrower bill that will address this need, and is acceptable to the US Department of Education.

¹ Heald's purpose is to provide students the opportunity to pursue an education that qualifies them for a rewarding career in the healthcare, business, legal or technology fields. Heald is accredited by the Accrediting Commission for Senior Colleges and Universities of the Western Association of School and Colleges (WASC), which also accredits Hawaii's public institutions.

²34 CFR 600.9

³ US Department of Education, Dear Colleague Letter GEN-12-13, Guidance on Program Integrity Regulations Relating to Legal Authorization by a State, July 27, 2012 at pg. 1, Question 2.