



Hawaii Post-Secondary Education Authorization Legislative Report

In Accordance with Act 180 (SLH 2013)

Prepared by the
HAWAII POST-SECONDARY EDUCATION AUTHORIZATION PROGRAM
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII
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HAWAII POST-SECONDARY EDUCATION AUTHORIZATION LEGISLATIVE REPORT

Introduction

Act 180 (SLH 2013) requires the Director of Commerce and Consumer Affairs to report to the legislature on the status of the newly-established Hawaii Post-Secondary Education Authorization Program (HPEAP) no later than twenty days prior to the convening of the regular sessions of 2014 and 2015. The report should include:

- 1) The status of any rulemaking, including interim rules;
- 2) The number of private colleges or universities, seminaries, and religious training institutions that have applied for authorization under this Act;
- 3) A summary of all complaints received, if any, against any private college or university, seminary, and religious training institution authorized pursuant to this Act;
- 4) A summary of all investigations, if any, conducted pursuant to this Act;
- 5) The number of private colleges or universities, seminaries, and religious training institutions, if any, that have closed during the reporting period;
- 6) An update on the efforts to implement the provisions of this Act;
- 7) An update of the budget as it relates to the implementation of this Act;
- 8) Any proposed amendments to the authorization fee structure;
- 9) A summary of the efforts to enter into a reciprocity agreement with any other state, including the status of any reciprocity agreement; and
- 10) Any proposed legislation.

Background

Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. §1070 *et seq.* establishes several types of federal student aid through programs administered by the U.S. Department of Education (“USDOE”). The Legislative Auditor, in Report No. 12-11, estimates that there are around 63,000 Hawaii Title IV recipients and \$283,656,517 in Hawaii disbursements in the form of student loans and other assistance. To participate in Title IV programs, a school must be an educational institution in any State that is legally authorized within the State to provide a program of education beyond secondary education. 20 U.S.C. §1001(a)(2), §1002. In October

2010, the USDOE adopted regulations that among other things provide that a school is legally authorized by a State only if the State has a process to review and appropriately act on complaints concerning the institution including enforcing applicable State laws. 34 C.F.R. §600.9(a)(1). Also, the school must be 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. 34 C.F.R. §600.9(a)(1)(i)(A). The October 2010 Final Rule provided for delayed implementation, where justified, to July 1, 2013.

In response to the USDOE authorization requirement, the state legislature in 2013 passed Senate Bill 46, S.D.2, H.D.3, C.D.1, and on June 25, 2013, Act 180 (2013) was signed into law, effective July 1, 2013. Act 180 among other things establishes a Post-Secondary Education Authorization Program (HPEAP), administered by the Director of Commerce and Consumer Affairs.

Implementation of the Act and Establishment of HPEAP

On May 21, 2013, after Senate Bill 46 was enrolled to the Governor but prior to enactment, the USDOE authorized a further delay until July 1, 2014 of the implementation of certain State authorization requirements, 78 Fed. Reg. 29652 (May 21, 2013). This delay provided state programs, including Hawaii's HPEAP program, some additional time to implement the federal regulations and gave schools more time to seek state authorization. Despite the delay in the implementation deadline, the Department has moved expeditiously to stand up the new program and HPEAP has already begun accepting applications for authorization.

Act 180 was signed into law on June 25, 2013. On June 28, 2013, HPEAP notified the U.S. Department of Education about the passage of the law and that the State would be utilizing the time before the new July 1, 2014 deadline to establish the Hawaii program in compliance with the State authorization regulations in 34 CFR §600.9.

Immediate efforts were undertaken to establish an email address (hpeap@dcca.hawaii.gov) and launch an HPEAP website that contained information about the new program, the law, "Frequently Asked Questions" and links to other useful sites. This website can be found at cca.hawaii.gov/hpeap. Authorization forms and complaint forms were also developed and uploaded to the website. Response to the website has been positive.

Because Act 180 had been drafted with the expectation that the State and affected schools would be faced with an immediate July 1, 2013 deadline for authorization, Part IV of the Act authorized the department to contract with an implementation coordinator or team to assist with the implementation of the Act and appropriated general revenues of \$400,000 for fiscal year 2013-2014 for implementation. With the new July 1, 2014 deadline, schools have been applying for authorization at a much more leisure pace. As such, the department established and created a new HPEAP Administrator position only, attached to the DCCA Director's office, and appointed qualified advisory members who provide subject matter expertise to the program. Given the low number of applications at this time, the Department has not pursued the retention of an implementation coordinator or team, but may do so at a later date.

While the foregoing efforts were going on, HPEAP received numerous telephone calls, email inquiries, and letters asking for information. Of the 60 or so inquiries between July and early November, many were from online or distance learning schools or programs which are exempt under the law. HPEAP also issued letters to those institutions requesting extension letters that the institutions could submit to the US Department of Education. To those institutions requesting “exemption” letters, HPEAP sent out informational letters only.

In anticipation of receiving applications, and to facilitate a “paperless” authorization process, HPEAP set up a secure electronic filing system for institutions to upload their applications and documents. This process has been successfully implemented and is in use currently.

Status of any rulemaking, including interim rules.

Although the program has been able to implement Act 180 without the need for rules, the program has been carefully evaluating the authorization process for areas that may require clarification by rule. Once the program gains more experience with the entire authorization process and with the types of questions and issues that arise, interim rules will be drafted.

The number of private colleges or universities, seminaries, and religious training institutions that have applied for authorization under the Act.

At present, two applications for authorization have been received from post-secondary education institutions. We anticipate completing the review process and issuing authorizations within the next 2-3 months. As the July 1, 2014 deadline approaches, we anticipate receiving many more applications.

Complaints, Investigations and School Closures.

As institutions are only now going through the authorization process, we do not anticipate receiving complaints against authorized schools at this time. As such, there are no complaints, investigations or closures to report.

Budget Update and Proposed Amendments to Fee Structure.

Act 180 provides for a \$400,000 general fund appropriation for FY2013-2014 and no funds for FY2014-2015. The Act also provides in section 18 for a \$10,000 fee for the initial authorization and for each biennial reauthorization. The department has attempted to minimize costs to the extent feasible, but notes that the program at the present time is not self-sufficient and appears to continue to require an infusion of general funds. Adequate funding will be critical as the program begins to receive and investigate student complaints or engages in enforcement as required under Title IV and under any proposed reciprocity agreement.

In order to facilitate a quick startup of the program, and as a cost saving measure, in-kind services were provided to another division by the HPEAP Administrator in exchange for use of an office and access to division support and infrastructure. It is likely that the arrangement will change over time as the needs and workload of the HPEAP Administrator increases and the program establishes and fills a second position.

HPEAP has also begun to look at establishing additional fees that should be promulgated so that the program can be fully implemented as provided for in section 6(d) of the Act, including the possible adoption of a compliance fee for those schools that are not authorized under the Act but that may have complaints that would be investigated by the program. Under the current funding structure, the cost of investigation and enforcement of those complaints would be borne by other schools authorized by HPEAP.

This is HPEAP's projections for FY 14:

Post Secondary Education Authorization Program, established pursuant to Act 180, SLH 2013	
	FY 14
	<i>est</i>
Revenues:	
General Revenues transfer; program start-up costs	400,000
Filing Fee ¹	200,000
TOTAL	600,000
Expenditures:	
Personnel	101,333
Other Current ²	99,816
Equipment	2,500
TOTAL	203,649
Excess (deficiency) of revenues over expenditures	396,351
Adjustments: Administrative overhead assessment	72,405
Fund balance³	323,946
<p>1 Projected revenues based on assumption that 20 schools would be authorized by FYE; receipt as of November 8, 2013 = \$20K.</p> <p>2 Includes projection for Personal Services-Fee basis.</p> <p>3 Note that the filing fee is on a biennial basis. As such, the FY 14 fund balance will have to fund operational needs in FY 15 and FY 16 until the re-authorization revenues are realized.</p>	

Reciprocity Agreement

HPEAP is still in the process of fully developing this program. The priority at this point in time is getting the institutions authorized. We will then need to fund and staff the program so that the complaints processing part of the Act can be implemented. We are cognizant of the efforts being made to establish reciprocity agreements among the states. The HPEAP Administrator will be attending a briefing in December to obtain more information about state reciprocity agreements.

Proposed Legislation

The Department remains concerned about the implementation of section 14 of Act 180 relating to financial integrity. Section 14 provides for three means of demonstrating financial integrity. The first option is available only to those schools that have operated continuously in the State for at least ten years and maintain a composite score of at least 1.5 as required by federal law (Section 14(b)). The second option is available for schools in the state less than 10 years and requires that the school maintain the 1.5 composite score and demonstrate through audited financial statements that the school maintains both positive equity and profitability in each year of its operations. The third option is for the school to provide a surety bond in an amount determined by the director.

The Department recommends for purposes of the second option (schools in the state for less than 10 years but that have a composite score of 1.5 or greater) that the Act be revised to delete the term "and profitability" that appears on page 33 line 18 (section 14(c)(3)). The program has been advised that although it is important that schools consistently maintain positive equity in its financial statements, it is not uncommon or necessarily inappropriate for a school to have financial statements that do not reflect profitability every year. Institutions may incur a loss in any particular year and still maintain positive equity. The current requirement that the school's financial statement consistently reflect profitability may unrealistically inhibit the school's ability to execute business plans or expansion plans or result in the school having to use the more expensive option of securing a surety bond.

Conclusion

The Department was tasked by Act 180 with establishing a program to comply with 34 C.F.R. §600.9. Since the law was enacted on June 25, 2013, the department has worked expeditiously to implement the new law. HPEAP is now fully operational and has been accepting applications for authorization. The program is currently not self-sufficient but has not yet completed an application cycle so its long term self-sufficiency is not yet clear. HPEAP will continue to work with stakeholders including the USDOE to ensure that Hawaii schools and Hawaii students will continue to fully participate in and benefit from Title IV programs.