

# HAWAII POST-SECONDARY EDUCATION AUTHORIZATION PROGRAM

NOVEMBER 2015 UPDATE

## HPEAP in 2015

As of this publication, 24 institutions are on the authorization list which can be found on the HPEAP website at <http://cca.hawaii.gov/hpeap/authorized-schools/>. There were two new authorizations this year. Authorized schools are on an even-year biennial reauthorization cycle.

In fiscal year (“FY”) 2015, HPEAP received five complaints. Three of the complaints were from students of the closed school. Two were from students of two different schools. One case was subsequently settled, and the complaint was withdrawn. The other was resolved with the issuance of an advisory letter. Information on the complaints process is on the HPEAP website at <http://cca.hawaii.gov/hpeap/student-complaint-process/>. The forms to be utilized can also be found on the website.

## Heald School Closure

In April 2015, Heald College closed suddenly, and although HPEAP had been in communication with school administrators for some time prior to closure, the actual timing of the closure was unexpected for students, faculty, and HPEAP. DCCA’s Director, Deputy Director, Program Administrator and DCCA Communications Officer met with Heald Honolulu’s President on the day after the closure was announced, in order to provide for a winding down process that sufficiently addressed student needs. In addition, HPEAP facilitated communications with the State of Hawaii’s Department of Labor and Industrial Relations Workforce Development Division to provide “Rapid Response” assistance to affected Heald employees, reached out to the University of Hawaii to explore transfer options for Heald students, and communicated with Hawaii’s congressional delegation to explore options for financial assistance at the federal level.

Incident to Heald College’s closure, Heald placed all or nearly all of its records in a storage facility in Kaimuki and provided HPEAP with a key to the storage unit. Shortly thereafter, HPEAP’s Program Administrator began the arduous task of cataloging over 850 boxes of records in storage, and identifying student transcripts. The records span the entire existence of the school, and include records from predecessor schools such as Cannon’s Business College. Because it was imperative that students receive transcripts quickly in order to transfer to other schools, HPEAP’s Program Administrator spent many hours searching through boxes to locate transcript materials. At the same time, HPEAP requested and received data files from Heald’s parent entity (Corinthian Colleges) that were gleaned from electronic student records that were normally housed in proprietary software and that contained information about Heald’s more recent students and graduates. HPEAP then worked with DCCA computer staff to accurately format and recreate student transcripts from the data that was provided. HPEAP relies on hard copy transcripts and electronically generated transcripts to respond to transcript requests. In addition, HPEAP recently completed a project to scan the hard copies of transcripts, which has reduced the need to access records from Heald’s storage facility.

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# Heald School Closure

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HPEAP received hundreds of inquiries over the phone and via email and received hundreds of requests for transcripts. As of November 20, 2015, HPEAP has issued close to 800 Heald transcripts and continues to receive a large number of transcript requests each week, as students relocate to other campuses or seek verification of their degrees.



**777**  
**Heald student  
record requests  
fulfilled by HPEAP  
(As of November 20, 2015)**

## State Authorization Reciprocity

HRS §305J-16 authorizes the director to enter into post-secondary education authorization reciprocity agreements under certain conditions. In the fall of 2014, HPEAP's Program Administrator conducted an informal survey of Hawaii authorized schools to gauge the level of interest in having Hawaii enter into a reciprocity agreement that would provide schools with reciprocal authorization in participating jurisdictions. Based on the survey responses and feedback from other jurisdictions and stakeholders, HPEAP is in the process of applying for membership in the State Authorization Reciprocity Agreement ("SARA") through the Western Interstate Commission for Higher Education ("WICHE").

## Federal Regulation and Enforcement

Because HPEAP's oversight authority is tied to federal requirements for state authorization under the Higher Education Act of 1965, HPEAP actively monitors developments on the federal level that may impact Hawaii schools. The Obama administration's education plan, for example, includes specific directives relating to helping middle class families afford college, strengthening community college, keeping college costs down, and improving transparency and accountability. <https://www.whitehouse.gov/issues/education/higher-education>.

Similarly, the USDOE has taken an active role in regulatory oversight and enforcement through the promulgation of regulations and policy statements ranging from state authorization (<http://www2.ed.gov/policy/highered/reg/hearulemaking/state-auth-qa-061915.doc>); oversight of accrediting organizations ("2015 Accreditation Policy Recommendations," National Advisory Committee on Institutional Quality and Integrity ("NACIQI"), July 2015: <http://www2.ed.gov/about/bdscomm/list/naciqi-dir/2015-spring/naciqi-finalpolrecom-jul222015.pdf>; "Accreditation Policy Recommendations," National Advisory Committee on Institutional Quality and Integrity ("NACIQI"), April 2012: <http://www2.ed.gov/about/bdscomm/list/naciqi-dir/2012-spring/teleconference-2012/naciqi-final-report.doc>); to college affordability (<http://www.ed.gov/college>); gainful employment (<http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html>); negotiated rulemaking on a variety of issues (<http://www2.ed.gov/policy/highered/reg/hearulemaking/2015/index.html>); and specific compliance action (<http://www.ed.gov/news/press-releases/us-department-education-fines-corinthian-colleges-30-million-misrepresentation>) and <http://www.businessinsider.com/for-profit-college-edmc-settled-civil-lawsuit-for-955-million-2015-11>.

HPEAP will continue to monitor developments at the federal level to provide for state conformity to evolving requirements.

## **HPEAP Fee Structure**

Act 180 provided for a one-time \$400,000 general fund appropriation to quickly stand up HPEAP and the creation of a special fund within the Department of Commerce and Consumer Affairs' ("DCCA") Compliance Resolution Fund to collect fees, fines and other related revenues to support HPEAP. HPEAP fees are assessed pursuant to HRS §305J-18. HRS §305J-6(d) provides that in administering its responsibilities, "the department may assess fees sufficient to provide for the self-sufficiency of the program pursuant to section 26-9(o)." As a program within DCCA, HPEAP's fee structure is consistent with the funding strategy utilized for other new DCCA programs, except that most new DCCA programs derive startup funds through special assessments on program applicants in addition to normal license fees.

DCCA receives zero general fund appropriations in its budget and is funded through a self-sufficiency model. This means that the costs of operating the program are borne by the program's registrants or licensees through fees, fines or penalties collected and interest earned. It also means that any program fees are to be used for the purposes the fees were assessed (including administrative overhead) and cannot be used to cross-subsidize other programs or revert to the general fund. See, *HIC v. Lingle*, 120 Hawaii 51, 201 P.3d 564 (2008). DCCA's funding strategy requires revenue-generating divisions to secure revenues to cover division expenses and contribute equitably to overhead costs. The Department's longstanding financial goal is to bring its beginning year cash reserves to nine months of budget ceiling plus overhead. This strategy ensures fund solvency and continuation of mandatory public services.

As a DCCA special funded program, HPEAP's budget includes personnel expenses plus fringe (i.e., worker benefits), other expenses such as equipment and supplies, a central services assessment by the director of finance (HRS §36-27), an amount attributable to administrative overhead that captures the cost of departmental support for the program including clerical and IT support, and an amount that would authorize HPEAP to contract for services (e.g., scanning).

## **HPEAP Budget and Fee Adjustments**

HPEAP's Program Administrator has attempted to conserve funds and avoid unnecessary expenses where possible and has successfully spent less than the program's authorized budget in each year of the program's existence. The program continues to rely on volunteer experts to assist in substantive and financial reviews. In February, HPEAP moved from its temporary office space to a space in the Director's Office that had previously been a supply room. This month, due to the increased workload associated with Heald College's closure and the work relating to anticipated participation in SARA, HPEAP filled the second of the two authorized HPEAP positions with the addition of an HPEAP Program Specialist.

In an attempt to meet its self-sufficiency requirements as set forth in HRS §26-9(o), in FY15, HPEAP reviewed its revenues and expenses, and determined that the program revenues were well short of amounts needed to meet DCCA's financial strategy (cash reserves to nine months of budget ceiling) and that a fee increase was required. Following public hearing, a fee increase was adopted by the Director in November 2015. Because the number of authorized institutions (24) is small, this increase in fees may still not result in program self-sufficiency, especially if there is a need to expend monies for investigations and utilization of attorney general services or outside counsel.

## Status of any rulemaking, including interim rules

Work on the rules was interrupted by the precipitous closure of Heald; however with the hiring of a second staff person, work on the rules will continue.

## Potential legislation

The Department is considering possible legislation regarding the retention period of student transcripts and other educational records.

## About HPEAP

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”). 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 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). Also, the 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).

In response to the October 2010 USDOE regulations, Act 180, Session Laws of Hawaii 2013 (“Act 180”), was signed into law (now HRS Chapter 305J). Act 180, among other things, established the Post-Secondary Education Authorization Program (“HPEAP”), administered by the Director of Commerce and Consumer Affairs. HPEAP provides state oversight of post-secondary accredited institutions to the extent not already provided for under existing laws and as may be required for participation in Title IV programs. Unlike most other states, Hawaii’s oversight of postsecondary education is de-centralized. As such, laws relating to postsecondary education include HRS §304A-3151 *et. seq.* (State Post-Secondary Education Commission, which is placed within the University of Hawaii for administrative purposes), HRS §302A-425 *et. seq.* (Private trade, vocational or technical schools, administered by the Hawaii Department of Education); HRS §439-18 (Cosmetology Schools, administered by the Board of Barbering and Cosmetology) and HRS Chapter 446E (Unaccredited Degree Granting Institutions, enforced by DCCA Office of Consumer Protection). See also, HRS §304A-3201.5 *et. seq.* (Hawaii western interstate commission for higher education, also attached to the University of Hawaii). See, Legislative Auditor Study of the Higher Education Act (2012) <http://files.hawaii.gov/auditor/Reports/2012/12-11.pdf>

See HPEAP’s website for more detailed information about the implementation of the program during 2013 and 2014. <http://cca.hawaii.gov/hpeap/reports/>.

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