

SB 46

WRITTEN ONLY

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEES ON HIGHER EDUCATION AND
COMMERCE AND CONSUMER PROTECTION
ON
SENATE BILL NO. 46

January 31, 2013

RELATING TO EDUCATION

Senate Bill No. 46, establishes the Post-Secondary Education Commission within the Department of Commerce and Consumer Affairs (DCCA), which was previously assigned to the University of Hawaii (UH) for administrative purposes, to bring Hawaii in compliance with the U.S. Department of Education regulations for programs authorized under Title IV of the Higher Education Act of 1965, as amended, and to more appropriately serve as the authorizing State agency for educational programs beyond secondary education. The bill also authorizes the Post-Secondary Education Commission to assess fees to private colleges, universities, seminaries, or religious training institutions for deposit into a separate subaccount of the Compliance Resolution Fund. In addition, the bill authorizes 4.00 positions and appropriates an unspecified amount of general and special funds for the operations of the program.

While the Department of Budget and Finance appreciates the intent of the bill to revise the State Post-Secondary Education Program, we defer to DCCA and UH regarding the technical issues and merits of the bill.

However, as a matter of general policy, the department does not support the creation of any special fund which does not meet the requirements of Section 37-52.3 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. In regards to Senate Bill No. 46, it is difficult to determine whether the proposed source of revenues will be self-sustaining.

I encourage the Legislature to scrutinize the fiscal and operational plan for this program to ensure that it does conform to the requirements of Section 37-52.3, Hawaii Revised Statutes.



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
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**PRESENTATION OF THE DEPARTMENT OF
COMMERCE AND CONSUMER AFFAIRS**

TO THE SENATE COMMITTEE ON
HIGHER EDUCATION

AND

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013

Thursday, January 31, 2013
2:45 p.m.

TESTIMONY ON SENATE BILL NO. 46, RELATING TO EDUCATION.

TO THE HONORABLE BRIAN T. TANIGUCHI, CHAIR,
TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 46, Relating To Education. My name is Jo Ann Uchida Takeuchi, Deputy Director of the Department. The Department supports the intent of this bill but does not support the relocation of this program from the University of Hawaii to the Department.

The Department recognizes the importance of quickly establishing a mechanism for Hawaii's authorization of institutions of higher learning. However, the Department does not believe that it is necessary, appropriate or feasible to do so by moving the state post-secondary education commission from its current location at the University of Hawaii to the Department.

Senate Bill No. 46, among other things, repeals the existing post secondary education commission within the University of Hawaii, establishes a new state post-secondary education commission with the Department of Commerce and Consumer Affairs, and sets forth definitions, exempt organizations, department's power and authority, restrictions on awarding degrees, authorization to operate in the state, reauthorization procedures, disciplinary sanctions, winding down procedures, school responsibilities, bonding requirements, reciprocity requirements, complaints procedures, authorization fees, creation of a subaccount within the compliance resolution fund, rulemaking authority, and general and special fund appropriations. Most importantly, the bill provides for an effective date of July 1, 2013, which the department understands is a mandatory start date for the program.

Given the time frame within which the program must be operational, the state can ill afford using the months between the present time and July 1, 2013 to stand up a brand new program within a department has no expertise in education and no familiarity with the Higher Education Act.

The State Auditor, in her Study of the Higher Education Act, Report No. 12-11, December 2012 ("Auditor Report"), came to a similar conclusion when she stated:

The Department of Commerce and Consumer Affairs could also potentially accommodate a state authorization program, but its lack of experience in postsecondary education and the mandate for self-sustaining programs could pose significant challenges.

Auditor Report at page 23.

The Auditor ultimately recommended that the authorization authority remain housed at the University of Hawaii, stating:

With an existing statutory vehicle and access to postsecondary education expertise, the University of Hawaii is the most suitable option for housing an authorization authority. The State Postsecondary Education Commission attached to UH could serve as the authorizing entity, but its membership should be amended to include representatives from institutions identified in the Higher Education Act. This would enable the commission to provide an independent, third-party complaints process as mandated by federal regulations and mitigate possible conflicts of interest.

Auditor Report at page 29.

Based on the Department's own experiences in standing up new licensing programs, the Department believes that the focus of the legislation should be on meeting the basic elements of state authorization set forth in the Higher Education Act within the prescribed timeframes to ensure uninterrupted eligibility for federal funding, rather than on the nuts and bolts of setting up the infrastructure for a new regulatory entity. According to the Auditor Report, Hawaii Title IV program participation in FY11 included over 63,000 program recipients and \$283,646,517.00 in disbursements. The Department believes that, given the time frame for implementation, the state's Title IV program recipients are best served if the state agency with the most postsecondary education expertise assist the state in transitioning to compliance with the Higher Education Act. For these reasons, the Department recommends that this committee

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Thursday, January 31, 2013
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adopt the recommendations of the Auditor and maintain state postsecondary education authority at the University of Hawaii.

Thank you for the opportunity to submit comments on Senate Bill No. 46.

TESTIMONY

Of

David A. Longanecker, President

Western Interstate Commission for Higher Education

Supporting

Hawaii Legislation Regarding State Authorization of Postsecondary Institutions

I am honored to offer this testimony in support of HB 1200 and SB 46, companion legislative proposals to ensure appropriate state authorization of degree granting postsecondary institutions in Hawaii. The Western Interstate Commission for Higher Education (WICHE), which I serve as President and CEO, applauds the authors of these pieces of legislation for bringing forth exemplary legislation that, if adopted, will not only serve Hawaii well, but will provide a national example of exemplary legislation.

WICHE has followed the development of this legislation closely because we are actively engaged in developing a program for reciprocal recognition of our fifteen member states and the pacific territories efforts in state authorization. Reciprocity within the WICHE region will help the states by reducing the costs associated with redundant and unnecessary state authorization efforts, it will help the institutions by reducing the costs of redundant compliance efforts, and most importantly it will help the students and prospective students by ensuring reasonable, comparable, and adequate consumer protection from state to state, not only within the WICHE region but throughout the new network between WICHE and its three sister regional compacts.

As WICHE began developing its voluntary State Authorization Reciprocity Agreement (SARA) more than a year ago, we frankly did not anticipate that Hawaii would originally be a part of this agreement. Reciprocity in state authorization requires confidence from the reciprocity parties that each of the participating states is providing reasonable oversight of the institutions operating from within the state, both for the purposes of assuring adequate consumer protection but also for the practical purpose of assuring that students attending those institutions remain eligible for federal student assistance. Up until this time, Hawaii has had no such oversight, so obviously would not have been eligible to join in a reciprocity agreement.

The legislation before you today not only would make the state able to participate in reciprocity, it provides a truly exceptional example for other states to follow.

For more than a quarter century the federal government, the states, and the accrediting community have partnered in a process of quality assurance referred to as the federal triad. The federal government currently provides more than \$90 billion in student financial assistance annually to approximately 20 million students in public, private non-profit, and private for-profit institutions around

the nation in the form of grants, loans, and work-study programs, so the federal government has a very strong interest in assuring these programs work well. To insure the integrity of the use of these federal funds, the federal government itself ensures that all participating institutions have the financial resources to responsibly provide their services, but relies on accreditation to assure the academic integrity of the institutions, and on the states to provide consumer protection, which is rightly a state responsibility. In recent years it became apparent that the role of the states within the federal triad needed to be shored up to preserve program integrity. This was true for two reasons. First, some states, including Hawaii, were providing virtually no oversight of the institutions within their jurisdiction, thus not assuring that this particular leg of the triad was being adequately supported. By contrast, some states were so onerous and outdated in their oversight that they were impeding innovation and broad access to postsecondary education. Second, the rapid advent of on-line learning was creating a myriad of problems, including a complex, redundant, and expensive process for institutions, which needed to secure approvals in many states. In addition, virtually no states were accepting responsibility for oversight of activities of their institutions when operating outside the state, thus there was no effective oversight of on-line activities in general.

To remedy these deficiencies, the federal Department of Education clarified their expectations of states and provided a limited amount of time for states to come into compliance. The legislation before you will not only bring Hawaii into compliance, but will set your state as an example of how to provide sufficient regulation and oversight without becoming overzealous in the process.

We applaud Hawaii for pursuing this legislation. You, your citizens, and your institutions will be well served by this effort.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony presented before the
Senate Committee on Higher Education
Senate Committee on Commerce and Consumer Protection
January 31, 2013 at 2:45 p.m.

By Linda K. Johnsrud

Executive Vice President for Academic Affairs & Provost, University of Hawai'i System

SB 46: RELATING TO EDUCATION

Chair Taniguchi, Chair Baker, Vice Chairs Kahele and Galuteria, and members of the Senate Committee on Higher Education and Committee on Commerce and Consumer Protection:

The University of Hawai'i supports SB 46 that establishes the post-secondary education commission within the Department of Commerce and Consumer Affairs (DCCA) to authorize private post-secondary educational institutions to operate in the state, to maintain a listing of such private institutions, and to act on complaints concerning these institutions. SB 46 addresses the requirements of the U.S. Department of Education regulations under Title IV of the Higher Education Act of 1965, as amended. The University appreciates the thoroughness of SB 46 in specifying the criteria for authorization of private institutions, for example, through accreditation status from a recognized national or regional body and demonstration of financial integrity. These provisions serve to protect authorized private institutions as well as the public by delineating the basis for authorization. Furthermore, it is the University's position that placing the authorization function outside the University of Hawai'i (UH) avoids the potential or the appearance of a conflict of interest were the state's sole public university to authorize private providers to operate within the state.

The University would also like to provide these additional comments on SB 46:

The state's post-secondary education commission was established in 1972 to qualify the state to receive federal funds for student financial aid, and was placed within the University of Hawai'i. Currently it has three functions: certification of higher education programs for veterans; distribution of federal financial aid to private and public institutions of higher education; and support for the state's membership in the Western Interstate Commission on Higher Education (WICHE).

The University respectfully requests that the certification function for veterans' higher education programs be moved to the post-secondary education commission in DCCA because its function is similar to private institution authorization. The University proposes to transfer a position from its veterans' affairs office to DCCA which will provide continuity, expertise, and experience in this area.

The University recommends that the federal financial aid and WICHE functions remain at UH. In the case of federal financial aid distribution, current UH personnel are able to absorb

the work within their position responsibilities related to financial aid. Continuing to perform this task at UH would provide, with existing resources, the needed expertise in financial aid and would benefit students by enabling the state to seamlessly deliver federal scholarships.

Similarly, WICHE support functions are absorbed by current UH staffing on a part-time basis. WICHE is a membership organization, and the University supports the state's membership and the WICHE commissioners. WICHE, a fifteen-state commission of western states, helps Hawai'i's students through student exchange programs and supports institutions by student access and success, workforce development, data, and policy initiatives and technical support. Two examples of student exchange programs that assist the state are the Professional Student Exchange Program and the Western Regional Graduate Program. They allow Hawai'i students the opportunity to study in select WICHE states or institutions that offer critical professional programs or high-quality distinctive graduate programs that are not available in our state.

Again, we appreciate the thoughtfulness in SB 46 in addressing the U.S. Department of Education regulations, and thank you for the opportunity to testify.

TESTIMONY of HEALD COLLEGE

on

SB 46

Before the

Senate Committee on Higher Education &
Committee on Commerce and Consumer Protection

31 January 2013

Chairman Taniguchi, and Chairwoman Baker, thank you for calling this hearing. 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.

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.

First, we would like to thank and acknowledge Sen. Tokuda for her work on this issue. She has been pursuing this matter for a couple of years now, and has been very responsive to the postsecondary community's needs.

The issue is a rather simple one. A few years ago, the US Department of Education changed the rule concerning a longstanding requirement in the Federal student financial aid regulations. These various programs, including Pell grants and Stafford student loans, are made available through the federal **Higher Education Act's (HEA) Title IV**.

This rule addresses the **state authorization** of postsecondary institutions, which is required of institutions to become "eligible institutions" for purposes of the Title IV student financial aid programs.

Up until now, the State 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.¹

We believe that **SB 46** goes well beyond what is needed to comply with the new rule. We suggest that the legislation’s scope be narrowed to address solely these new requirements.

The US Department of Education has released guidance on this rule that offers a path to where we believe this legislation should arrive. 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.² 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) 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.

¹ 34 CFR 600.9

² 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.

Again, we appreciate the attention that has been given to this matter, which is so important to our students and our institutions. We stand ready to aid Sen. Tokuda and the committee to help formulate a narrower bill that will address this need.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

July 27, 2012

GEN-12-13

Subject: Guidance on Program Integrity Regulations Relating to Legal Authorization by a State

Summary: This letter provides further guidance on the program integrity final regulations published on October 29, 2010, addressing State authorization.

Dear Colleague:

On October 29, 2010, the Department published in the Federal Register final regulations on program integrity issues (75 FR 66832). The final regulations are available at <http://www.ifap.ed.gov/eannouncements/110110PubFinalRulesforTitleIVStudentAidPrgrms.html>. These final regulations make a number of changes to the regulations governing the programs authorized by the Higher Education Act of 1965, as amended (HEA). The regulations were generally effective July 1, 2011.

The enclosure to this letter provides additional guidance on State authorization. This guidance is provided to assist institutions with understanding the changes to the regulations in this area and does not make any changes to the regulations. Affected parties are responsible for taking the steps necessary to comply by the effective dates established in the final regulations.

We encourage you to review the preambles to the notice of proposed rulemaking (75 FR 34812-34813, June 18, 2010) and the final regulations (75 FR 66858-66868, Oct. 29, 2010) as well as the final regulations themselves (75 FR 66946-66947, Oct. 29, 2010) with respect to the provisions concerning State authorization. In addition, relevant technical corrections were published on April 13, 2011 (76 FR 20534-20536).

We thank you for your continued cooperation as we work to implement these regulations. For further information, please contact Sophia McArdle by telephone at (202) 219-7078 or by e-mail at sophia.mcardle@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Enclosure

General

Question 1: Is an institution required to update its Eligibility and Certification Approval Report (ECAR) by submitting updated information about its State authorization on its Application for Approval to Participate in Federal Student Financial Aid Programs (E-App)?

Answer 1: An institution should ensure that it is currently in compliance with the regulations but is not required to immediately update its ECAR. An institution applying for recertification should submit an application using the Application for Approval to Participate in the Federal Student Financial Aid Programs (E-App) to include the information showing its legal authorization based on these regulations. In addition, an institution may be asked to provide that information upon request during an audit or program review. If an institution has any questions about documenting its State legal authorization, it should contact its School Participation Team. Contact information for School Participation Teams is found at <http://www.eligcert.ed.gov/>.

Question 2: If an institution's articles of incorporation establish the institution by name and identify its purpose as offering postsecondary education, is the institution considered to comply with the provisions of 34 CFR 600.9 (a)(1)(i)(A) and to be legally authorized by the State in which it is incorporated?

Answer 2: Yes, if the institution can demonstrate that the State played an active role in authorizing the entity to provide postsecondary education, and if the State has a student complaints process in accordance with 34 CFR 600.9(a)(1). The institution must also show that it meets any other applicable State approval or licensure requirements under 34 CFR 600.9(a)(1)(i)(B).

Question 3: Can a limited liability company (LLC) be compliant with 34 CFR 600.9 (a)(1)(i)(A), or is it considered a business subject to the provisions of 34 CFR 600.9 (a)(1)(ii)?

Answer 3: An LLC is considered a business subject to the provisions of 34 CFR 600.9(a)(1)(ii), and the institution must have State approval or licensure. For purposes of the student aid programs, LLCs will be reviewed on a case by case basis to determine if the State has authorized the entity to operate a postsecondary educational institution. These reviews will be done routinely during the recertification process, but may also arise during a program review.

Other locations and consortia

Question 4: Must an institution provide State authorization information for locations for which it offers less than 50 percent of any program?

Answer 4: No. The Department is continuing its policy that students attending one or more locations of an institution where the students cannot complete more than 50 percent of a program are considered to be enrolled at the main campus of the institution and these locations need not be listed on its E-App or included on its ECAR. Please note, however, that State requirements

may require an institution to obtain approval of such sites, and the Department may take that information into consideration when determining whether the institution meets applicable State requirements.

Question 5: How does the 50 percent standard apply to internships and externships?

Answer 5: The portions of programs students take in internships and externships are considered when determining whether a student can complete more than 50 percent of a program at a location not recognized by the Department as a separate additional location of the institution, provided that those activities are monitored by qualified institutional personnel. However, if the Department is notified by a State that the institution's activities are not in compliance with State authorization or licensure requirements, the Department will take that information into consideration when determining whether the institution meets the applicable State authorization requirements.

Question 6: How do the regulations on State authorization apply to institutions involved in consortia agreements with institutions in other States?

Answer 6: For purposes of the Title IV, HEA programs, an institution offering a program is responsible for ensuring that all parts of the program it offers to its students meet all applicable State requirements. If a student enrolled in a program from one institution takes required coursework from an institution located in another State, that coursework is deemed to be a part of the program offered by the first institution, unless the student is required to enroll separately in the out-of-State institution. The first institution is responsible for determining what State approvals are needed and for ensuring that any needed approvals are obtained by it or by the institution providing the out-of State coursework. In addition, the institution must provide to its students or prospective students the contact information for the relevant State official or agency that could handle a student's complaint for an issue at that location. The institution enrolling the student must also ensure that its accreditation includes all needed approvals applicable to the program.

In addition, institutions must comply with the regulations in 34 CFR 668.5 that govern written arrangements between eligible institutions to provide all or part of an educational program.

Decision in legal challenge to program integrity regulations

Question 7: How does the ruling of the U.S. Court of Appeals for the District of Columbia Circuit concerning the validity of the State authorization regulations affect what institutions must do to be in compliance with those regulations?

Answer: The Court of Appeals upheld the requirements intended to give greater substance to the concept of State authorization by sustaining the need for an institution to be authorized by name by an appropriate State agency and affirming that this agency must have a process for reviewing and acting upon student complaints, as established in 600.9(a). The Court vacated on procedural grounds the requirement intended to clarify existing Department policy that State authorization

extends to students receiving distance education in a State in which the institution is not physically located.

As a result, institutions must comply with the provisions found in 600.9(a). The Department will not enforce the requirements of 600.9(c), although institutions continue to be responsible for complying with all State laws as they relate to distance education.

Student complaints and student consumer information

Question 8: If a tribal college has an additional location that is not on tribal lands, does the college need to obtain State authorization for that location and identify a separate complaint process for students attending the additional location in the State?

Answer 8: Yes, a location of a tribal college located in a State rather than on tribal land must comply with the State approval process in that State. In addition, the college must provide to its students or prospective students the contact information for the relevant State official or agency that could handle a student's complaint for an issue at that location.

Question 9: Can an institution offering distance education in multiple States satisfy the provisions of 34 CFR 668.43(b) that it provide State contact information for filing complaints by providing a link to a noninstitutional Web site that identifies the contact information for multiple States?

Answer 9: Yes, so long as the link is accessible from the institution's Web site and the link is prominently displayed and accurately described. The institution is also responsible for ensuring that the link is functioning and accurate.

Question 10: Is an institution required to provide consumer information to all students, including students enrolled in distance education?

Answer 10: Yes, an institution must make sure that all of its students are provided with the applicable information that corresponds to their enrollment. The information must be for every State in which the institution is operating, including every State where students are enrolled for distance education.

Question 11: If an institution offering distance education in a State has only one student in that State, must it still provide the contact information for that State?

Answer 11: Yes.

Question 12: If a student taking a program by distance education moves to another State, must the institution list the contact information for that State in its consumer information? What if the student is temporarily taking the program in another State because, for example, the student is visiting a friend?

Answer 12: Institutions determine that students are still enrolled as a part of the normal disbursement process each payment period. To the extent an institution is aware a student taking distance education has moved to another State, it must make sure the student has access to the State contact information for filing complaints in that State.

Question 13: If a student taking distance education is in the military and is given an assignment outside the United States, is the contact information for the institution's main location sufficient?

Answer 13: Yes.

Question 14: Is there an updated version of the summary chart published in the preamble of the regulations that includes the relevant regulatory citations?

Answer 14: Yes.

Meets State Authorization Requirements*			
Row	Legal entity	Entity description	Approval or licensure process
ROW A	Educational institution	<p><u>§600.9(a)(1)(i)(A)</u> A public, private nonprofit, or for-profit institution established by name by a State through a charter, statute, authorized by the State to offer postsecondary education in its articles of incorporation, or other action by an appropriate State agency or State entity.</p>	<p><u>§600.9(a)(1)(i)(B)</u> The institution must comply with any applicable State approval or licensure process and be approved or licensed by name; and if there is an approval or licensure process, may be exempted from such requirement based on its accreditation, or being in operation at least 20 years, or use both criteria.</p>
ROW B	Business	<p><u>§600.9(a)(1)(ii)</u> A for-profit entity established by the State on the basis of an authorization or license to conduct commerce or provide services.</p>	<p><u>§600.9(a)(1)(ii)(A)</u> The State must have a State approval or licensure process, and the institution must comply with the State approval or licensure process and be approved or licensed by name to offer postsecondary education. <u>§600.9(a)(1)(ii)(B)</u> An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption.</p>
ROW C	Charitable organization	<p><u>§600.9(a)(1)(ii)</u> A nonprofit entity established by the State on the basis of an authorization or license for the public interest or common good.</p>	<p><u>§600.9(a)(1)(ii)(A)</u> The State must have a State approval or licensure process, and the institution must comply with the State approval or licensure process and be approved or licensed by name to offer postsecondary education. <u>§600.9(a)(1)(ii)(B)</u> An institution in this category may not be exempted from State approval or licensure based on accreditation, years in operation, or a comparable exemption.</p>
<p>*Notes:</p> <ul style="list-style-type: none"> • These requirements do not apply to Federal, tribal, and religious institutions (<u>§600.9(a)(1)(iii)</u> and <u>(b)</u>). • A State must have a process, applicable to all institutions except tribal and Federal institutions, to review and address complaints directly or through referrals (<u>§600.9(a)</u>). • The chart does not apply to distance education programs offered out-of-State. 			



Senate Committee on Education

Senate Committee on Commerce and Consumer Protection

January 31, 2013; 2:45 p.m.

S.B. 46

Relating to Education

Testimony in Support

Chair Tokuda, Chair Baker and Members of the Committees, my name is Geoffrey Bannister, and I am President of Hawai'i Pacific University (HPU). HPU is a private, non-profit university with three campus locations: the Hawaii Loa campus on the windward side of the island, the downtown campus in Honolulu, and Oceanic Institute, an affiliate research facility at Makapu'u Point. We currently have more than 4,200 undergraduate and 1,000 graduate students, plus an additional 2,300 students matriculating through HPU's Military Campus Programs. I am proud to say, we are one of the most culturally diverse universities in America with the state's largest nursing, MBA and military servicing programs.

HPU supports SB 46 which establishes the post-secondary education commission within the Department of Commerce and Consumer Affairs (DCCA), creates the framework for authorizing private post-secondary educational institutions in the state, and creates the post-secondary education authorization subaccount of the compliance resolution fund.

In 2010, the U.S. Department of Education set a July 2011 deadline for institutions to comply with the requirement that states authorize post-secondary institutions. However, it recognized that states might be unable to provide authorizations by that date, and thus provided a means for institutions to be granted an authorization extension to as late as July 1, 2013. In the absence of an entity and framework for authorizing post-secondary institutions, Hawaii may become ineligible to receive Title IV federal funds, or student aid.

We respectfully offer the following minor clarifying amendments:

Page 6, lines 17-18 to read:

(C) Provide office space for instructional and non-instructional staff; ~~and~~ or non-instructional staff.

RATIONALE: The use of “and” in this context in this subsection is inconsistent with the functionality of sections (1) and (2) under the definition of “Physical presence.”

Page 15, beginning at line 21 to read:

(a) To operate in the State, a private college or university shall apply for, on a form prescribed by the department, and receive authorization from the commission; provided that a private college or university shall apply for and obtain a separate authorization for each campus, branch, or site that is separately accredited. A separate authorization shall not be required for additional professional accreditations.

RATIONALE: Private colleges or universities often hold additional professional accreditations recognizing certain programs within the college or university. Such accreditations are in addition to and come under the overall umbrella of the institutional accreditation to offer post-secondary education.

Page 17, lines 15-16 to read:

(d) A private college or university shall [~~immediately~~] within thirty days notify the department....

RATIONALE: The term “immediately” is somewhat vague and a more specific timeframe would ease compliance with notification requirements.

Page 26, lines 6-7 to read:

(2) [~~Annually~~] In accordance with its reauthorization schedule provide the department with a copy of its enrollment agreement, if applicable.

RATIONALE: Providing the department with copies of the enrollment agreement at the time reauthorization is required would lessen the burden on departmental personnel of tracking paperwork.

Thank you for the opportunity to testify.

Contact: Linda Chu Takayama, Attorney at Law

Phone number: (808) 545-3060

Email: Ltakayama@hawaii.rr.com



Testimony Presented to the
Senate Committee on Higher Education
Senate Committee on Commerce and Consumer Protection

Thursday, January 31, 2013 at 2:45 pm

by
Chaminade University of Honolulu President
Bro. Bernard J. Ploeger, SM, Ph.D.

SB 46
Relating to Education

Chairpersons Taniguchi and Baker, and members of the Committees on Higher Education and Commerce and Consumer Protection:

Thank you for the opportunity to provide testimony in **support** of SB 46 establishing the post-secondary education commission within the Dept. of Commerce and Consumer Affairs and repealing the sections establishing the commission within the University of Hawaii. The commission will have the power to authorize private post-secondary educational institutions in the state, will create a post-secondary education compliance resolution fund, and will make an appropriation to fund permanent positions in the DCCA.

It is imperative that action immediately be taken by the State of Hawaii to create such a commission. The purpose of this legislation is to bring Hawaii into compliance with Title IV changes issued by the U. S. Dept. of Education in October 2010. Without passage of this legislation, neither the state nor independent universities will be qualified to receive funding under the Higher Education Act of 1965.

Chaminade University of Honolulu supports this legislation to establish a post-secondary education commission within the DCCA because it already has the authority for consumer protection and is a neutral third-party in the educational community. In addition, we would strongly support authorization to enable Hawaii to enter into reciprocity agreements with other states. Reciprocity agreements enable distance education providers to offer postsecondary education programs in other states without having to seek authorization from each of those states, thus reduction paperwork and costs.

Thank you for allowing us to submit this testimony.

A handwritten signature in red ink that reads "Bro. Bernard J. Ploeger, SM, Ph.D." The signature is written in a cursive style.

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Hawai'i State Senate

Committee on Higher Education

Committee on Commerce and Consumer Protection

Thursday, January 31, 2013

Senate Bill 46 – In Support with Technical Amendments

Hearing Testimony – University of Phoenix

Chair Taniguchi, Chair Baker, and members of the Committees on Higher Education and Commerce and Consumer Protection,

On behalf of the University of Phoenix, thank you for giving us the opportunity to testify in support of Senate Bill 46 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. These requirements are contained in 34 C.F.R. 600.9.

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 and a structure needs to be in place prior to 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. Many of the updated provisions are similar to requirements we already comply with in other states.

However, there are two specific areas where we believe technical amendments would provide a more effective piece of legislation.

§4(c) as it relates to state funds stipulates, "No funds appropriated by the legislature may be used to aid a person attending an institution not owned or exclusively controlled by the State or a department of the State..." This provision would eliminate eligibility for state educational assistance to any student who does not attend an institution that is controlled or owned by the state of Hawai'i. University of Phoenix believes this provision goes beyond the scope of the federal state authorization requirements and unduly restricts access to higher education for residents of Hawai'i. We request that §4(c) be omitted.

Additionally, §7(d) in part requires a college or university to "[i]mmediately notify the department of any material information related to an action by the institution's accrediting body concerning the institution's accreditation status, including but not limited to reaffirmation or loss of accreditation, approval of a request for change, a campus evaluation visit, a focused visit, or approval of additional locations..." Many institutions, such as the University of Phoenix, have locations across the United States and, as currently written this section may be interpreted to require that institutions notify the Department of Commerce and Consumer Affairs whenever an action by our accrediting body takes place regardless of its impact on students in Hawai'i. For example, the University of Phoenix would be required to notify DCCA if a new location in Florida was approved by its accrediting body. This interpretation would create additional work for staff at DCCA and result in little value for the people of Hawai'i. In order to

avoid this outcome, we request amending this section to read: “A private college or university shall, ~~immediately~~ within 30 days of receipt of notice of a final action, notify the department of any material information related to ~~an~~ such action by the institution’s accrediting body concerning the institution’s accreditation status, including but not limited to reaffirmation or loss of accreditation, approval of a request for change, a campus evaluation visit, a focused visit, or approval of additional locations in Hawai’i. In addition, the institution shall within 30 days of receiving the information notify the department if the institution’s accrediting body is no longer recognized by the United States Department of Education.”

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 very much for your time.



January 31, 2013
2:45 p.m.
Conference Room 414

TESTIMONY TO
THE JOINT SENATE COMMITTEES ON
HIGHER EDUCATION AND COMMERCE AND CONSUMER PROTECTION

RE: SB 46 – Relating to Education

Chairs Taniguchi and Baker, Vice Chairs Kahele and Galuteria and the members of the committees,

My name is Robert Witt and I am executive director of the Hawaii Association of Independent Schools (HAIS), which represents 99 private and independent schools in Hawaii and educates over 33,000 students statewide.

HAIS supports SB 46 which establishes the post-secondary education commission within the Department of Commerce and Consumer Affairs and creates the framework for authorizing private post-secondary educational institutions in the State.

HAIS' membership encompasses all levels of education including post-secondary institutions. This measure would bring Hawaii in compliance with federal mandates in order to continue a private post-secondary student's access to Title IV funding. We understand that without this legislation many of Hawaii's students would be financially overburdened and likely unable to pursue their educational endeavors. Thus, we offer our support for this measure.

Thank you for the opportunity to testify.