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# Sunrise Analysis: Regulation of Unaccredited Degree Granting Institutions

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A Report to the  
Governor  
and the  
Legislature of  
the State of  
Hawai'i

Report No. 14-03  
January 2014



**THE AUDITOR**  
STATE OF HAWAII

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## Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawai'i State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

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2. Management audits, which are also referred to as performance audits, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called program audits, when they focus on whether programs are attaining the objectives and results expected of them, and operations audits, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. Sunset evaluations evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
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State of Hawai'i

Complaints against  
UDGIs in 2005

239

Complaints against  
UDGIs in 2013

1

OCP actions filed against  
UDGIs, 1997-2012

51

Recommendations

Response

Prior Studies

# Sunrise Analysis: Regulation of Unaccredited Degree Granting Institutions

Report No. 14-03, January 2014

*Proposed regulation is not warranted, as existing laws provide sufficient consumer protection*

## HB 1200, HD 2 is not reasonably necessary to protect the public

House Bill No. 1200, House Draft 2, is not needed to comply with the Higher Education Act of 1965 and other flaws in the bill do not warrant its enactment. The proposed regulation is unwarranted, as recent legislation has changed the legal landscape and the bill has several flaws. For instance, a post-secondary education *program* now exists within the Department of Commerce and Consumer Affairs (DCCA), whereas the bill proposes to place a *commission* there. More importantly, the bill does not specify a regulatory framework; that is, it does not state whether it would require licensure, certification, or registration for unaccredited degree granting institutions. We found the cost of regulation would be prohibitive, at nearly twice the fees for accredited institutions. These costs would likely translate to higher costs for consumers and restrict entry into the field for other unaccredited institutions. There have been numerous complaints against unaccredited degree granting institutions, but these have declined considerably in recent years, from a peak of 239 in 2005 to one in 2013.

## Existing laws protect consumers

The purpose of Chapter 446E, HRS, is consumer welfare, and although Hawai'i has a reputation for lax regulation of diploma mills, it is also known for actively prosecuting them. Enforcement by DCCA's Office of Consumer Protection against unaccredited degree granting institutions for violations of prohibited practices under existing laws in Chapter 446E, Hawai'i Revised Statutes (HRS), provides sufficient consumer protection. All states, including Hawai'i, have laws addressing unaccredited institutions. Hawai'i's law already covers online entities.

## Most of LRB's 1993 recommendations have been addressed

Six of the nine recommendations in the Legislative Reference Bureau's 1993 Report No. 5, *Private Accreditation and State Authorization of Degree Granting and Non-degree Granting Institutions in Hawai'i*, have been addressed.

## Agency response

The DCCA concurred with our conclusion that a post-secondary authorization program regulating UDGIs is unnecessary. Regarding the number of UDGIs physically located in Hawai'i, DCCA pointed out that its database of business registrants is not limited to UDGIs and there may be UDGIs operating without a business registration, as registration is not mandatory.

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# **Sunrise Analysis: Regulation of Unaccredited Degree Granting Institutions**

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Submitted by

**THE AUDITOR**  
STATE OF HAWAI'I

Report No. 14-03  
January 2014

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## Foreword

This analysis of the regulation of unaccredited degree granting institutions was prepared pursuant to Senate Concurrent Resolution No. 119, Senate Draft 1 of the 2013 regular session, which requests the Auditor conduct a “sunrise” review of the proposal to regulate unaccredited degree granting institutions in House Bill No. 1200, House Draft 2. The *Hawai‘i Regulatory Licensing Reform Act*, Chapter 26H, Hawai‘i Revised Statutes, requires the Auditor to evaluate proposals to regulate previously unregulated professions or vocations. The analysis presents our findings and recommendations on whether the proposed regulation is consistent with the policies in the licensing reform law and its probable effect.

We wish to express our appreciation for the cooperation and assistance extended by staff of the Department of Commerce and Consumer Affairs, the Department of Education, the Department of Human Resources Development, the University of Hawai‘i, and other organizations and individuals whom we contacted during the course of our project.

Jan K. Yamane  
Acting State Auditor

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# Chapter 1

## Introduction

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This report responds to Senate Concurrent Resolution No. 119, Senate Draft 1 (SCR 119, SD 1) of the 2013 legislative session, which requests that the Auditor conduct a “sunrise” review of the proposal to regulate unaccredited degree granting institutions (UDGIs) in House Bill No. 1200, House Draft 2 (HB 1200, HD 2). Specifically, the resolution asks the Auditor to:

- Assess current and alternative forms of regulation pursuant to Section 26H-6, Hawai‘i Revised Statutes (HRS), and estimate the number of unaccredited degree granting institutions operating under Chapter 446E, HRS, *Unaccredited Degree Granting Institutions*; the number physically located in Hawai‘i; and the number of students enrolled at each institution;
- Review UDGIs’ compliance with Chapter 446E, HRS, including enforcement actions brought by the Department of Commerce and Consumer Affairs (DCCA)’s Office of Consumer Protection; laws governing UDGIs in other states, including laws requiring all degree granting institutions to be accredited; and best practices for the regulation of UDGIs;
- Determine whether regulation of UDGIs should also apply to online institutions located either within or outside Hawai‘i that enroll Hawai‘i residents; and
- Determine whether the findings in the Legislative Reference Bureau’s 1993 Report No. 5, *Private Accreditation and State Authorization of Degree Granting and Non-degree Granting Limitations on Hawai‘i*, were carried out.

Section 26H-6, HRS, of the *Hawai‘i Regulatory Licensing Reform Act*, requires the Auditor to analyze new regulatory measures that would subject unregulated professions and vocations to licensing or other regulatory controls. These analyses are known as “sunrise” reviews. The Auditor must assess whether the proposed regulation is necessary to protect the health, safety, and welfare of consumers and is consistent with other regulatory policy provisions in Section 26H-2, HRS. In addition, the Auditor must examine the probable effects of the proposed regulation and assess alternative forms of regulation.

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## Background on Unaccredited Degree Granting Institutions

### *House Bill No. 1200, House Draft 2*

House Bill No. 1200, House Draft 2 proposes to re-establish the State Post-Secondary Education Commission within DCCA instead of the University of Hawai‘i. Effective July 1, 2015, the commission is charged with overseeing the post-secondary authorization program of unaccredited degree granting institutions pursuant to Chapter 446E, HRS.

The bill’s purpose is to bring Hawai‘i into compliance with Title IV of the federal Higher Education Act of 1965, as amended in October 2010, to hold programs accountable for preparing students for gainful employment and protect them from misleading recruiting practices.

### *Impetus for the study*

Following our 2012 *Study of the Higher Education Act* (Report No. 12-11), the Legislature enacted Act 180, Session Laws of Hawai‘i (SLH) 2013, for the purpose of bringing Hawai‘i into compliance with Title IV of the federal Higher Education Act of 1965. Act 180 establishes the Post-Secondary Education Authorization Program within DCCA and creates a framework for authorizing private post-secondary educational institutions in Hawai‘i. The act does not apply to unaccredited degree granting institutions. Concomitantly, the 2013 Legislature introduced HB 1200, HD 2 for the same purpose as Act 180, but included regulating unaccredited degree granting institutions; and it passed SCR 119, SD 1 (2013) requesting this sunrise analysis of the bill.

### *Accredited versus unaccredited degree granting institutions*

Degree granting institutions can be either *accredited* or *unaccredited*. In Hawai‘i, the Western Association of Schools and Colleges is the recognized regional accrediting association that accredits private schools, colleges, and universities in the state. Private trade, vocational, and technical schools are required to be licensed, and are regulated by the state Department of Education (DOE). Although often assumed to be so, accrediting bodies are not the sources of colleges’ legal authority to issue degrees and do not have direct power to authorize the existence of a college or degree program, even though a state may delegate qualitative oversight of a college to an accrediting body.

Chapter 446E, HRS, defines an unaccredited institution as a degree granting institution that is not accredited or a candidate for accreditation by at least one nationally recognized accrediting agency listed by the U.S. secretary of education. In addition, Section 446E-1, HRS, defines a degree as a post-secondary credential—whether earned or honorary—that confers on the recipient the title or designation of *associate*, *bachelor*, *baccalaureate*, *master*, *doctor*, *doctorate*, or anything that signifies satisfactory completion of the requirements of an academic or professional program of study beyond the secondary school level.

A degree is valid if it is *properly granted* (that is, not fraudulently or mistakenly granted) by an entity that has the *legal authority* to do so. In the U.S., there are three ways that a college can obtain authority to issue degrees: from Congress, a state government, or a sovereign Indian tribe. Federal authorization of degree granting authority is not common in the U.S.; over 98 percent of degree granting institutions—more than 4,000 as of 2009—operate under authority from state governments, usually state authorization. Authorization is generally given to three categories of institutions: public institutions owned or operated by a state or its political subdivision; private institutions that have formal authorization to provide degrees; and religiously exempt schools. States authorize private colleges in three ways: by direct charter or the like; by license or the like from a regulatory agency; and de facto authorization due to religious exemption statutes.

### **What is a “diploma mill”?**

Diploma mills are mostly online entities that offer substandard or bogus degrees in exchange for payment and not much else. Often these entities will grant a “degree” based on the submission of a résumé detailing life experience, and will even let applicants choose their major and year of graduation. Others might require the student to do some work, but because of the lack of recognized accreditation or authorization to grant degrees, the certificates are worthless. Systems of higher education recognition and accreditation vary greatly across the globe, making it easier for diploma mills to confuse and deceive. Telltale signs of a diploma mill include poorly designed websites, degrees that can be purchased at a very low price or earned in a short span of time, and a graduation date that can be selected by the applicant.

There is no single definition of a diploma mill. Federal law has defined it as an entity that:

- Offers—for a fee—degrees, diplomas, or certificates that may be used to represent to the general public that the individual possessing such has completed a program of post-secondary education or training;
- Requires such individual to complete little or no education or coursework to obtain such degree, diploma, or certificate; and
- Lacks accreditation by an accrediting agency or association recognized as such by the U.S. secretary of education or a federal agency, state government, or other organization or association that recognizes accrediting agencies or associations.

It should be noted that diploma mills differ from companies that produce fake certificates in the names of genuine, respected institutions. Counterfeit documents (fake degrees from real universities) can be identified by checking with the university or college named, which can confirm whether or not an individual has graduated from there. “Real” degrees from fake universities, however, are more difficult to identify because bogus institutions will readily confirm their customers’ credentials. Exhibit 1.1 shows an example of a degree from a university that does not exist—in other words, a “real” degree from a fake university.

**Exhibit 1.1**  
**Example of a Degree From a University That Does Not Exist**



Source: DiplomaMakers.com

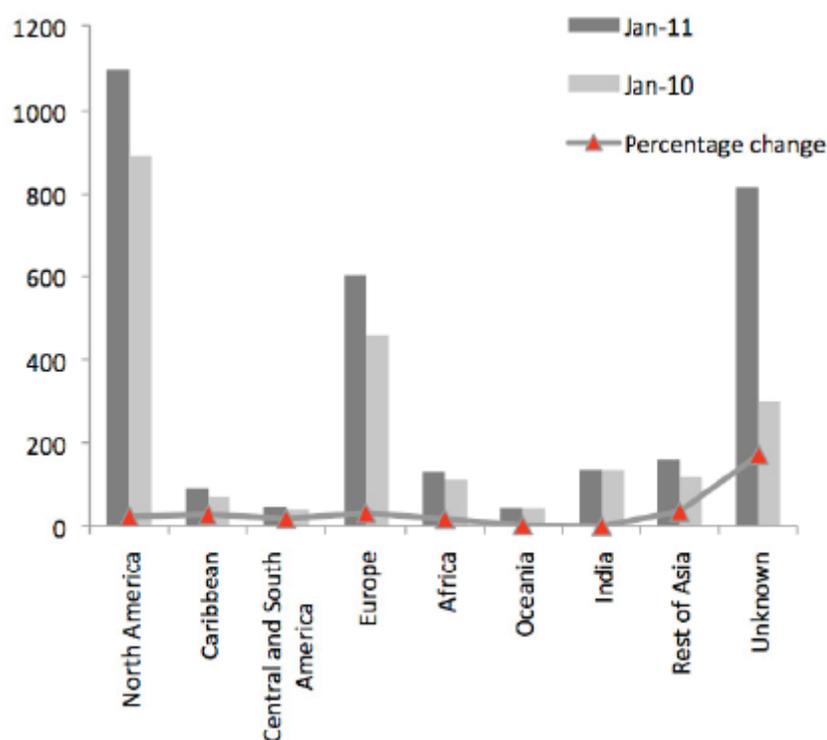
**Unaccredited degree granting institutions worldwide**

Some experts estimate that in 2011, the worldwide sale of fake degrees totalled \$300 million per year or more; and that over the last decade, fake degree sales have easily exceeded a billion dollars. With an average cost of at least \$1,000 per degree, this equates to at least one million people who have purchased fake degrees.

There is no coordinated government effort to combat diploma mills. However, a database of diploma and accreditation mills has been developed by a U.K. company, Accredibase. As of 2011, the company had identified 2,615 known bogus education and accreditation providers, an increase of 839 (48 percent) in just one year. In addition to the

huge number of confirmed mills, new suspect institutions continue to be discovered daily. Since diploma mills are deceptive regarding their true locations and move often, statistics regarding physical locations are unreliable. Exhibit 1.2 shows a snapshot of an estimated number of degree and accreditation mills by global region, as of January 2010 and 2011.

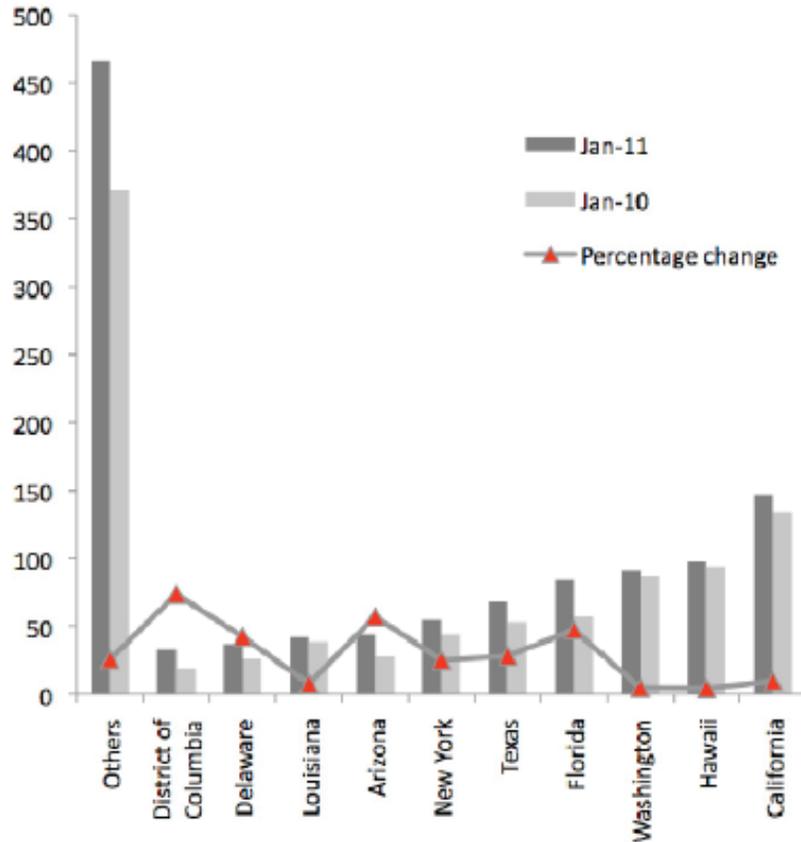
**Exhibit 1.2**  
**Degree and Accreditation Mills by Global Region,**  
**January 2010 and January 2011**



Source: Verifile Limited and Accredibase, 2011

According to a 2011 Accredibase report, North America is the most popular region for diploma mills, with 1,095 purportedly operating in the region—an increase of 23 percent from 2010. The largest increase was in the number of mills operating in unknown locations, up 170 percent from 2010. The U.S. continued to be the most popular location for diploma mill providers; in 2011, 1,008 were known to have operated or be operating from the country, an increase of 20 percent from 2010. California had the greatest number of diploma mills, followed by Hawai‘i, Washington, and Florida. Exhibit 1.3 shows the top ten states for diploma and accreditation mills as of January 2010 and 2011.

**Exhibit 1.3**  
**Top Ten States for Diploma and Accreditation Mills,**  
**January 2010 and January 2011**



Source: Verifile Limited and Accredibase, 2011

### **Unaccredited degree granting institutions in Hawai‘i**

There are 12 likely unaccredited degree granting institutions currently operating in Hawai‘i, as reported on DCCA’s list of active business registrations. There may be other unaccredited schools physically located in Hawai‘i that have not registered with DCCA as a business. Exhibit 1.4 lists all unaccredited schools with active Hawai‘i business registrations and their approximate student enrollment. This list does not include entities that may operate primarily or exclusively online with students located in Hawai‘i.

**Exhibit 1.4****Unaccredited Degree Granting Institutions in Hawai'i and Student Enrollments**

	<b>School Name</b>	<b>Address</b>	<b>Website</b>	<b>No. Students (Approximate)</b>
1.	Akamai University	187 Kino'ole St. Hilo, Hawai'i	akamaiuniversity.us	28 local
2.	American Andragogy University	1108 Fort St. Mall, Suite 3 Honolulu, Hawai'i	aauniv.com	*
3.	Asia-Pacific College	1616 Makiki St. Honolulu, Hawai'i	apchawaii.org	*
4.	Atlantic International University	Suite 40 Pioneer Plaza Honolulu, Hawai'i	aiu.edu	108 local 1,357 total
5.	Honolulu University	1314 South King St., Suite 625 Honolulu, Hawai'i	honolulu-university.edu	27 local 400 total
6.	International East-West University	931 University Ave., Suite 308 Honolulu, Hawai'i	english.iewu.edu	*
7.	International Quantum University for Integrative Medicine	735 Bishop St., Suite 337 Honolulu, Hawai'i	iquim.org	45 local 850 in degree programs 7,000 total
8.	International University of Professional Studies	1135 Makawao Avenue Makawao, Hawai'i	iups.edu	31 local 120 total
9.	Kona University	75-6099 Kuakini Highway Kailua-Kona, Hawai'i	kona.edu	*
10.	London International Graduate School University	810 Richards St., Suite 200 Honolulu, Hawai'i	ligsuniversity.com	*
11.	Pylord University	c/o Choi & Oh CPA Inc. 1440 Kapi'olani Boulevard, Suite 1200 Honolulu, Hawai'i	*	*
12.	University of the Nations	75-5851 Kuakini Highway #433 Kailua-Kona, Hawai'i	uofnkona.edu	*
<b>TOTAL</b>				<b>At least 239 local At least 8,877 total</b>

\*No information available.

Source: Office of the Auditor

## ***Hawai'i law relating to unaccredited degree granting institutions***

Unaccredited degree granting institutions are governed by Chapter 446E, HRS, *Unaccredited Degree Granting Institutions*, which neither licenses or approves such institutions.

### **Chapter 446E, Hawai'i Revised Statutes**

Chapter 446E, HRS, was established in 1979 when the previous law pertaining to degree granting institutions, Chapter 446D, HRS, was repealed. The Legislature had determined that Chapter 446D did not sufficiently protect the public and chose to repeal it and adopt a new law requiring unaccredited institutions to disclose in all their materials, including online, that they are not accredited by an accrediting agency recognized by the U.S. secretary of education.

Section 446E-2, HRS, requires unaccredited institutions to disclose their accreditation status in catalogs, promotional materials, and contracts for instruction. The font size of the disclosure must be as large as or larger than any other text in the catalog, promotional material, or contract for instruction. Unaccredited institutions are also required to keep accurate records of student enrollment, courses, fees, and matriculation records; retain these records for five years; and make them available to DCCA upon demand.

Under Section 446E-5, HRS, unaccredited institutions are prohibited from:

- Indicating or suggesting the State licenses, approves, or regulates their operations;
- Issuing a law or medical degree if the institution is not accredited by the American Bar Association or the Liaison Committee on Medical Education, respectively;
- Issuing any degree unless the institution has an office located in Hawai'i, with at least one employee residing in Hawai'i and 25 enrolled students in Hawai'i;
- Accepting or receiving any tuition payment or any other fee from or on behalf of a student unless the institution, if it operates in or from Hawai'i or has a presence in Hawai'i, complies with all the requirements of Chapter 446E, HRS. *Presence* means offering courses, programs, or degrees or maintaining a campus or an administrative, corporate, or other address in Hawai'i. This appears to include entities that offer online courses to students located in Hawai'i; and
- Disclosing in any catalog, promotional material, or written contract for instruction that it has applied for future accreditation.

By law, any unaccredited institution with a presence in the state must designate and maintain an agent in Hawai'i to accept service of process on behalf of the institution, whose name, address, and telephone number must be provided to DCCA. Violations are deemed unfair or deceptive acts or practices under Section 480-2, HRS (relating to unfair competition and deceptive practices), and subject to fines of \$500 to \$10,000 per violation. Individuals also have the right under state law to file private or class action lawsuits against entities they believe have violated Chapter 446E, HRS. In addition to Chapter 446E, and like any private business, unaccredited degree granting institutions are also subject to the general business and consumer protection laws of the state. Although the director of commerce and consumer affairs has the authority to adopt administrative rules to carry out the functions, powers, and duties of Chapter 446E, no such rules have been adopted.

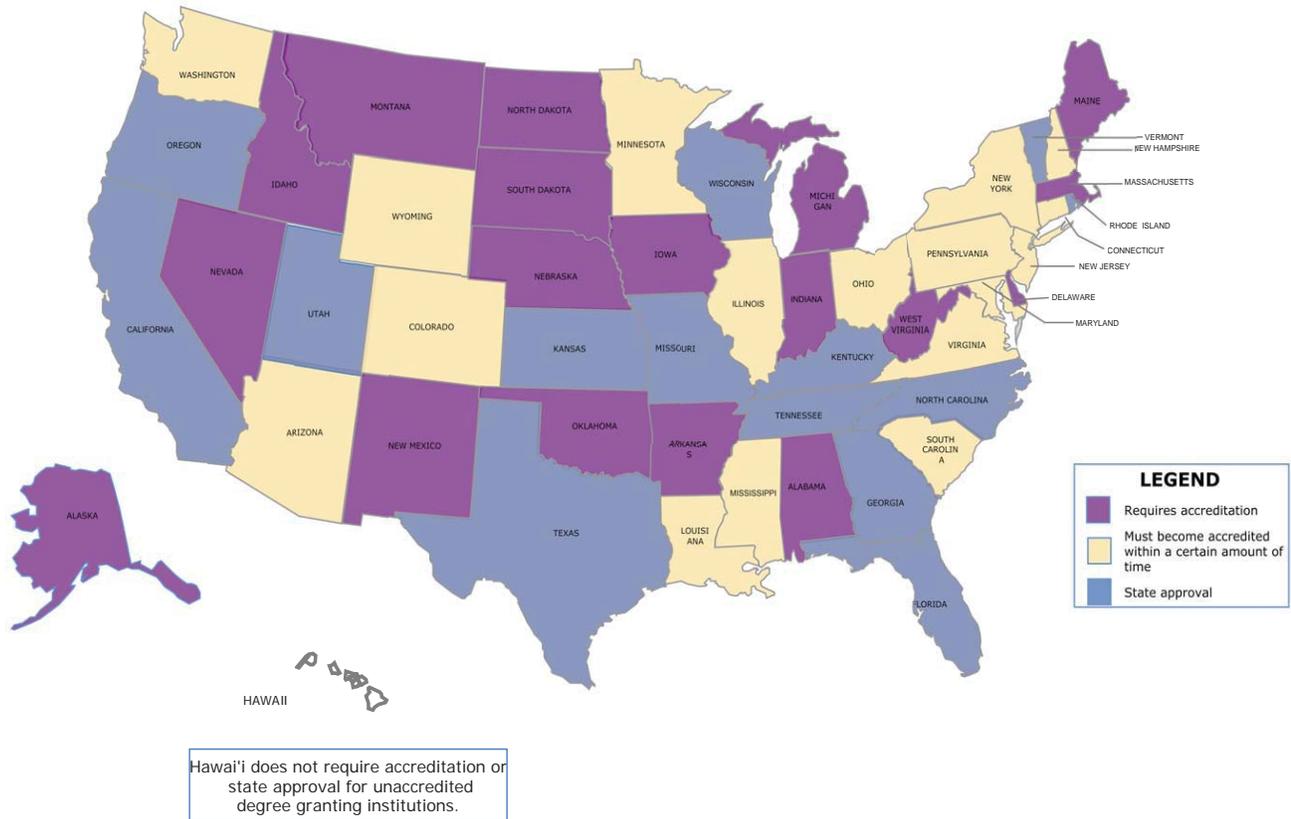
### **Office of Consumer Protection**

The DCCA Office of Consumer Protection (OCP) is the state agency responsible for enforcing Chapter 446E, HRS. The office was created in 1969 to protect the interests of consumers and legitimate businesses and serves as consumer counsel for the State under Chapter 487, HRS, *Consumer Protection*. As such, OCP is the primary agency responsible for reviewing, investigating, and prosecuting allegations of unfair or deceptive trade practices in consumer transactions. The OCP also provides consumer education and promotes awareness of important consumer protection issues. The office has jurisdiction over a wide range of businesses and commercial activities and receives a broad variety of consumer complaints each year.

### ***Regulation in other states***

Every state except Hawai'i requires post-secondary degree granting institutions to either be accredited or approved by the state in order to operate. Thirty-six states (72 percent) require all degree granting institutions to be accredited, either before beginning operations or within a certain amount of time. Thirteen states (26 percent) allow unaccredited institutions to operate if they have received state approval, usually in the form of licensure, certification, or authorization. Exhibit 1.5 shows the regulation of unaccredited institutions across the country.

**Exhibit 1.5**  
**Map of UDGI Regulation in the United States**



Source: Office of the Auditor

**Prior Studies**

**Legislative Reference Bureau report**

In 1993, the Legislative Reference Bureau issued Report No. 5, *Private Accreditation and State Authorization of Degree Granting and Non-degree Granting Institutions in Hawai'i*, in response to a legislative request to study the social and economic impacts of unaccredited degree granting and non-degree granting institutions in Hawai'i. At the time, both accredited and unaccredited trade schools (described as non-degree granting institutions including private trade, technical, and vocational schools) were licensed by the DOE.

The bureau found the DOE lacked adequate staffing for its licensing program, stating that for every 25 licensed schools, an agency should have at least one full-time employee. The addition of professional staff—including investigators, accountants, educators, and attorneys—was recommended, as well as annual site visits, teach-outs, tuition reimbursement funds, graduated fee schedules, and criminal record checks for school owners. The bureau also found the State had no

oversight agency or statutes relating to an institution's degree-granting authority. At the time, the federal Higher Education Act required states to have regulatory mechanisms in place to conduct reviews of post-secondary institutions. The bureau made six recommendations in this area, which primarily addressed proposed and existing legislation.

In part, SCR 119, SD 1 (2013) asked that we examine LRB's 1993 findings to determine whether its recommendations have been implemented.

### **Office of the Auditor reports**

We have not conducted any studies that specifically examine unaccredited degree granting institutions or their regulation. We have, however, performed two studies regarding educational regulation.

Our 2002 Report No. 02-08, *A Study on the Licensing of Private Trade, Vocational, and Technical Schools*, found the DOE failed to allocate necessary resources to properly administer its licensing program. Only two positions were assigned to administer the program on a part-time basis; and there were no full-time or investigative staff dedicated to the licensing program, which the department said it did not want nor have the expertise to license and regulate the schools. The lack of commitment also resulted in a failure to assure students that their financial interests were protected and they were receiving a quality education.

Report No. 12-11, *A Study of the Higher Education Act* (2012), was conducted pursuant to Act 132, SLH 2012. The act asked us to examine and recommend a regulatory framework to ensure the State complied with federal provisions relating to the authorization of institutions offering educational programs beyond secondary education. Under the Higher Education Act of 1965, eligible states are qualified to receive federal Title IV student aid funds, which in FY2011 totaled \$280 million for Hawai'i. The U.S. DOE recently issued new regulations requiring states to have an entity capable of authorizing institutions to provide post-secondary education programs by July 2013 or risk jeopardizing federal student aid funding. The study identified the minimum standards required of post-secondary institutions, namely: academic quality, financial viability, and compliance with applicable state laws on consumer protection and other matters of state oversight.

We recommended establishing a state post-secondary education authorization program to meet the requirements of the federal Higher Education Act of 1965 and concluded the University of Hawai'i was the most suitable option for housing such a program. In response, the Legislature established such a program through Act 180, SLH 2013; however, it placed the program within DCCA rather than the university.

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## Objectives of the Analysis

1. Determine whether the regulation of unaccredited degree granting institutions is warranted.
2. Determine what level and type of regulation, if any, is appropriate.
3. Make recommendations as appropriate.

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## Scope and Methodology

We assessed the need to regulate unaccredited degree granting institutions, as requested in SCR 119, SD 1 of the 2013 legislative session, using criteria from Section 26H-2, HRS, of the *Hawai'i Regulatory Licensing Reform Act* even though unaccredited institutions are businesses rather than a profession or vocation. The Legislature's stated policy is to regulate professions or vocations only if there is a need to protect consumers. Regulation is an exercise of the State's police power and should not be imposed or used lightly.

## *Regulatory policy in Hawai'i*

Hawai'i's "sunrise" law requires the Auditor to assess new regulatory proposals that would subject unregulated professions and vocations to licensing or other regulatory controls against the regulation policies provided in Section 26H-2, HRS. These policies state the primary purpose of such regulation is to protect consumers. Specifically:

- The State should regulate only where it is reasonably necessary to protect consumers;
- Regulation should protect the health, safety, and welfare of consumers and not the occupation;
- Regulation should be avoided if it artificially increases the costs of goods and services to consumers, unless the cost is exceeded by the potential danger to consumers;
- Regulation should be eliminated when it has no further benefit to consumers;
- Regulation should not unreasonably restrict qualified persons from entering the profession; and
- Aggregate fees for regulation and licensure must not be less than the full costs of administering the program.

We were also guided by *Questions a Legislator Should Ask*, a publication of the national Council on Licensure, Enforcement, and Regulation that states the primary guiding principle for legislators is whether an unregulated occupation presents a clear and present danger to the public's health, safety, or welfare. If it does, regulation may be necessary; if not, regulation is unnecessary and wastes taxpayers' money.

In addition to the regulatory policies in Chapter 26H, HRS, and the guidance from the council, we considered other criteria for this analysis, including whether or not:

- The incidence or severity of harm based on documented evidence is sufficiently real or serious to warrant regulation;
- Any other alternatives provide sufficient protection to consumers (such as federal programs, other state laws, marketplace constraints, private action, or supervision); and
- Most other states regulate unaccredited institutions for the same reasons.

In assessing the need for regulation, we placed the burden of proof on proponents of the measure to demonstrate the need for regulation. We evaluated their arguments and data against the above criteria. We assessed whether proponents have provided sufficient evidence for regulation. In accordance with sunrise criteria, even if regulation *may* have *some* benefits, we recommend regulation only if it is *demonstrably* necessary to protect the public.

### ***Types of regulation***

As part of our analysis, we assessed the appropriateness of regulatory alternatives. The three approaches commonly taken to occupational regulation are:

1. *Licensing*, which is the most restrictive form of occupational regulation and confers a legal right to practice to individuals who meet certain qualifications. Penalties may be imposed on those who practice without a license. Licensing laws usually authorize a board that includes members of the profession to establish and implement rules and standards of practice;
2. *Certification*, which restricts the use of certain titles (for example, social worker) to persons who meet certain qualifications but does not bar others from offering such services without using the title. Certification is sometimes called title protection. Government certification should be distinguished from professional certification,

or credentialing, by private organizations. For example, social workers may gain professional certification from the National Association of Social Workers; and

3. *Registration*, which is used when the threat to the public's health, safety, or welfare is relatively small or when it is necessary to determine the impact of the operation of an occupation on the public. A registration law simply requires practitioners to register their details onto the State roster so the State can keep track of practitioners. Registration can be mandatory or voluntary.

## **Methodology**

We reviewed literature on unaccredited degree granting institutions and its regulation and practices, including any standards promulgated by relevant national bodies, and regulation in other states. We reviewed enforcement actions filed by the state Office of Consumer Protection and inquired about complaints made to the Regulated Industries Complaints Office and the Better Business Bureau. We also reviewed regulatory statutes in other states related to unaccredited institutions and analyzed the various forms of regulations and their provisions.

We contacted relevant personnel at DCCA, local accredited institutions, employers, and unaccredited degree granting institutions, and other individuals with relevant expertise on the issues. We attempted to identify the costs and possible impacts of the proposed regulation.

Our work was performed from June 2013 to November 2013 in accordance with the Office of the Auditor's *Manual of Guides* and generally accepted government auditing standards. Those standards require that we plan and perform our work to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence we obtained provides a reasonable basis for our findings and conclusions based on our objectives.

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# Chapter 2

## Proposed Regulation Is Not Warranted, As Existing Laws Provide Sufficient Consumer Protection

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Higher education is a critical mechanism for socio-economic advancement and an important driver of economic mobility in our society. As a result, demand for higher education degrees has led to a thriving industry that includes both accredited colleges and universities and unaccredited degree granting institutions. Unaccredited institutions, which account for an estimated 20 percent of legally operating degree granting institutions in the U.S., have long been considered synonymous with “diploma mills,” entities that offer degrees for a fee but require little to no work to obtain the degree. Experts in the industry believe that not all unaccredited institutions are diploma mills; however, they acknowledge there is no easy way to prove or disprove this assertion.

Although Hawai‘i has a reputation for lax regulation of diploma mills, it is also known for actively prosecuting them. We found that enforcement by the Department of Commerce and Consumer Affairs (DCCA)’s Office of Consumer Protection against unaccredited degree granting institutions (UDGIs) for violations of prohibited practices under existing laws in Chapter 446E, Hawai‘i Revised Statutes (HRS), provides sufficient consumer protection.

Moreover, House Bill No. 1200, House Draft 2 (HB 1200, HD 2), is not needed to comply with the Higher Education Act of 1965 (HEA), and other flaws in the bill do not warrant its enactment. Finally, we also found that six of the nine recommendations in the Legislative Reference Bureau’s 1993 Report No. 5, *Private Accreditation and State Authorization of Degree Granting and Non-degree Granting Institutions in Hawai‘i*, have been addressed.

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### Summary of Findings

1. House Bill No. 1200, House Draft 2 is not reasonably necessary to protect the public.
2. Existing laws provide sufficient consumer protection.
3. Most of the recommendations from the Legislative Reference Bureau’s 1993 Report No. 5 have been addressed.

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## House Bill No. 1200, House Draft 2 Is Not Reasonably Necessary to Protect the Public

### *The proposed regulation is unwarranted*

In assessing whether a profession or vocation (or, in this case, a business entity) warrants registration, certification, or licensure by the State, we adhere closely to the criteria in the State’s regulatory licensing reform law, Chapter 26H, HRS. We found that a post-secondary education commission within DCCA and framework for authorizing private post-secondary education institutions as proposed in HB 1200, HD 2 is not necessary to bring Hawai‘i into compliance with Title IV of the federal Higher Education Act of 1965. Moreover, evidence of past harm and abuse has declined significantly in recent years. Accordingly, heightened state regulation is not warranted.

House Bill No. 1200, House Draft 2, is not necessary. The stated purpose of the bill is to bring Hawai‘i into compliance with Title IV of the federal Higher Education Act of 1965, as amended, by establishing a post-secondary education commission within DCCA and creating the framework for authorizing private post-secondary educational institutions in Hawai‘i.

The bill proposes that a post-secondary education commission within DCCA is, among other things, to oversee the authorization of UDGIIs pursuant to Chapter 446E, HRS. The federal HEA now requires that states authorize post-secondary institutions in order to be eligible for federal programs (such as student aid). However, one requirement of eligibility is *accreditation*. We note that UDGIIs are, by definition, not accredited, and therefore could never be eligible for such federal programs. We conclude that unlike accredited degree granting institutions, where state authorization is a requirement, authorization of UDGIIs is not required to comply with the HEA. Therefore, the proposed regulation is unwarranted.

### **Recent legislation has changed the legal landscape**

Recent legislation has altered the legal landscape in which HB 1200, HD 2 would operate. In 2006, a post-secondary education commission was created and attached to the University of Hawai‘i. The commission was designed primarily to receive federal funds available under HEA. Through Act 180, SLH 2013, the Legislature created a post-secondary education *program*—as opposed to a *commission*—within the Department of Commerce and Consumer Affairs. The Legislature did not, however, repeal the commission attached to UH; therefore, both entities currently exist. It is in light of this landscape, that we analyzed the proposed regulation of UDGIIs under HB 1200, HD 2.

### **HB 1200, HD 2 is flawed**

In addition to not comporting with the new legal landscape, HB 1200, HD 2 is flawed because of its failure to provide a clear regulatory framework. Specifically, HB 1200, HD 2 does not stipulate that UDGI's must be licensed, certified, or registered by the State. As described in Chapter 1, the existing statute governing UDGI's (Chapter 446E, HRS) requires particular disclosures and prohibits certain practices, but it does not require UDGI's to be licensed, certified, or registered in Hawai'i. Thus, there are no provisions in either the bill or existing statute that address the details of a regulatory program for UDGI's.

In addition, the bill proposes to transfer all rules, policies, procedures, guidelines, and other material adopted or developed by DCCA in implementing Chapter 446E, HRS, to a post-secondary commission within DCCA. However, as just described, Act 180, SLH 2013, established a post-secondary education *program* within DCCA but did not repeal the *commission* attached to UH. Currently, neither entity is tasked with overseeing UDGI's.

The bill also proposes to amend Section 446E-1, HRS, by deleting the definition of "director" (which means the director of commerce and consumer affairs), although it does not propose any change to Section 446E-1.7, *Powers and duties of the director*. Those powers and duties merely state that the director may adopt administrative rules to carry out Chapter 446E, HRS. No other powers or duties are specified. A regulatory statute should specify who will be responsible for administering a regulation and what power that regulatory entity will have.

Finally, the bill also proposes to repeal Section 446E-1.5, HRS, which already was repealed in Act 180, SLH 2013. Thus this portion of the bill is moot.

### ***Cost of regulation would be prohibitive***

A critical policy component to Hawai'i's regulatory licensing reform law is that fees for regulation must cover the entire cost of administering the regulatory program. Further, regulation that artificially increases the cost of goods and services to consumers should be avoided where possible, and regulation must not unreasonably restrict entry into a field. We found that, based on the estimated number of UDGI's physically located in the state, unaccredited institutions would need to pay more than \$24,000 every two years—more than twice the amount required of accredited institutions. We also found that additional regulation would unnecessarily increase the cost of goods to consumers and restrict entry into the field.

**Regulatory fees for UDGI would be more than twice those for accredited institutions**

According to the department, adding a registration component to Chapter 446E, HRS, would do little to enhance existing consumer protection safeguards while significantly increasing the cost of regulation for both the State and UDGI. The proposed legislation, HB 1200 HD 2, does not specify what level of regulation (that is, licensure, certification, or registration) is contemplated, but we asked the department to estimate the cost of a regulatory program based on the least intensive of these options (registration).

The department estimates that a biennial registration program for UDGI, assuming there are 12 physically located in Hawai‘i, would cost approximately \$297,000 per biennium to run. Exhibit 2.1 breaks down the department’s estimate for a regulatory program based on the parameters above.

**Exhibit 2.1  
DCCA Cost Estimate of UDGI Regulatory Program**

Item	First year startup cost	First year cost per UDGI*	Biennial cost	Biennial cost per UDGI*
Administrative assistant II (SR24) plus fringe	\$75,798		\$151,596	
Secretary II (SR14) plus fringe	\$47,896		\$95,792	
Other operating expenditures	\$25,000		\$50,000	
Furniture/equipment	\$20,000		--	
<b>Total</b>	<b>\$168,694</b>	<b>\$14,058</b>	<b>\$297,388</b>	<b>\$24,782</b>

\*Estimated, assuming 12 UDGI registrants.

Source: Department of Commerce and Consumer Affairs

A biennial renewal fee of \$24,782 is more than twice the \$10,000 that accredited institutions are required to pay biennially under the post-secondary authorization program established by Act 180, SLH 2013, and administered by the department.

**Additional regulation would increase costs to consumers and restrict entry into the field**

We contacted stakeholders in Hawai‘i for their input regarding the impact of the proposed regulation. All five UDGI that we spoke with said additional regulation would increase costs to their students; three felt it would unreasonably restrict entry into the field.

Unaccredited stakeholders agreed that increased regulation would result in higher costs to students. They argued that, by increasing costs to

students, stricter statutes would decrease consumer choice by reducing educational opportunities for consumers who cite lower tuition and fees as a consideration in their decisions to attend unaccredited institutions.

Moreover, most of these unaccredited stakeholders also believe that increased regulation would unreasonably restrict entry into the field. One argued that regulation, under the guise of protecting the public, would in reality serve to enhance the reputation and standing of accredited institutions. Several UDGI's commented that increased regulation may cause them to shut down, financially impacting their current students and staff. Another noted that a change in existing oversight to, for instance, a review board such as the Post-Secondary Education Commission, would be detrimental to UDGI. This institution argued that commission members would likely be traditionalist and unresponsive to teaching strategies developed for adult learners, such as open learning, non-standardized program curriculum, and self-paced online learning for adults, which it said are the hallmarks of the institution.

While one of the two accredited institutions and two of the three employers we spoke with advocated requiring accreditation for all degree granting institutions, the executive vice president of academic affairs at the University of Hawai'i said UDGI's should be allowed to operate. She said that institutions should be able to choose whether they want to be accredited or not, as the accreditation process is rigorous and costly; and that she understands small schools may not be able to afford accreditation but should be allowed to operate if they are providing an educational service the public wants. Regulation, she said, should not be used to prevent schools from opening.

***Evidence of past harm and abuse has declined considerably***

State law stipulates that evidence of abuses by providers is to be accorded great weight in determining whether regulation is necessary. We found that although there have been spikes in complaints—which, according to the director of the Office of Consumer Protection (OCP), generally related to the same institution—in recent years these have been relatively few and on the decline.

Since 1996, OCP has received 497 complaints against unaccredited institutions. Exhibit 2.2 shows the number of complaints by year.

**Exhibit 2.2**  
**Complaints Received by Office of Consumer Protection,**  
**1996–2013**

Year	Number of Complaints
1996	1
1997	6
1998	3
1999	3
2000	1
2001	39
2002	22
2003	27
2004	12
2005	239
2006	107
2007	6
2008	9
2009	8
2010	5
2011	5
2012	3
2013	1*
<b>Total</b>	<b>497</b>

\*As of October 23, 2013.

Source: Office of Consumer Protection

We also contacted Hawai‘i’s Better Business Bureau and the State Ombudsman, both of which reported no complaints against unaccredited degree granting institutions in the last three years. The DCCA’s Regulated Industries Complaints Office (RICO) likewise has not been involved in any UDGI complaints (complaints filed with DCCA’s Consumer Resource Center are transmitted to OCP, not RICO).

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**Existing  
Laws Protect  
Consumers**

The current law regulating unaccredited degree granting institutions, Chapter 446E, HRS, does what it is designed to do; that is, it addresses potential problems stemming from solicitations that fail to adequately disclose a school’s unaccredited status. To the extent potential students may be confused or misled by solicitations from UDGIs offering degrees, Chapter 446E, HRS, mandates conspicuous disclosure. In that regard, current statute fulfills the traditional consumer protection framework.

Other professional and vocational licensing laws are similarly premised on the concept of consumer protection by ensuring that a person or entity holds the necessary qualifications to perform a service for a consumer.

We found that existing laws provide sufficient consumer protection against potential abuses by unaccredited degree granting institutions in Hawai‘i. Specifically, the purpose of Chapter 446E, HRS, is indeed consumer welfare; and the Office of Consumer Protection is already charged with, and has been rigorous in, enforcing the existing law. We also found that all states, including Hawai‘i, have laws addressing unaccredited institutions and that online entities are already covered by existing law.

***Purpose of the law governing unaccredited institutions is consumer welfare***

In 1971, the Legislature enacted Chapter 446D, HRS, which required degree granting institutions other than the University of Hawai‘i to obtain a license from what is now DCCA. The intent was to protect consumers against diploma mills. Chapter 446D, HRS, required degree granting institutions other than the University of Hawai‘i system to obtain a license prior to awarding any degrees. The law also allowed institutions with feasible and acceptable plans for moving toward accreditation to receive temporary permits. However, the department contended it was difficult to ensure an applicant or holder of a temporary permit had good faith, feasible plans for obtaining accreditation. Thus, following perceptions of regulatory overkill and undue administrative burdens, Chapter 446D, HRS, was repealed in 1979.

Chapter 446E, HRS, was enacted in 1979. The Legislature felt the previous law did not bear a sufficiently compelling relation to “the protection of that part of the public who might deal with degree granting institutions” to warrant the law’s continued existence. Instead, the 1979 Legislature adopted the new law requiring degree granting institutions to disclose the institution’s accreditation status to the public and potential students. The Department of the Attorney General testified that such disclosure, aided by sanctions for failure to disclose, provided consumers the same degree of protection they were currently receiving yet eliminated unnecessary and burdensome regulation. The DCCA agreed that a disclosure requirement would better serve the public interests and minimize government regulation.

However, by the late 1990’s, a proliferation of diploma mills in Hawai‘i moved the Legislature to reverse its course of deregulation and provide additional safeguards. The DCCA reported that unaccredited degree granting institutions were “burgeoning,” with more than 100 such schools operating in Hawai‘i. In 1999, the Legislature amended Chapter 446E, HRS, by adding more consumer safeguards, such as clearer disclosures and a prohibited practices section. The amended statute

specifies that the font size of disclosures must be as large as or larger than any other text in an institution’s catalog, promotional material, or contract for instruction. It also provides specific language to be included in all UDGI disclosure statements. Unaccredited institutions are also prohibited from suggesting the State licenses, approves, or regulates their operations. Supporters of the amendments, which included DCCA, the Chamber of Commerce of Hawai‘i, and accredited and unaccredited institutions, urged their passage as a way to increase consumer protections and eliminate diploma mills.

Exhibit 2.3 shows an example of a disclosure statement that meets the requirements of Chapter 446E, HRS. Exhibit 2.4 shows a disclosure statement, from an unaccredited institution no longer operating in Hawai‘i, that does not comply with Chapter 446E.

**Exhibit 2.3**  
**Unaccredited Degree Granting Institution Disclosure Statement That Complies With Chapter 446E, HRS**

THE INTERNATIONAL QUANTUM UNIVERSITY FOR INTEGRATIVE MEDICINE IS NOT ACCREDITED BY AN ACCREDITING AGENCY RECOGNIZED BY THE UNITED STATES SECRETARY OF EDUCATION.

Note: In the United States, many licensing authorities require accredited degrees as the basis for eligibility for licensing. In some cases, accredited colleges may not accept transfer courses and degrees completed at unaccredited colleges, and some employers may require an accredited degree as a basis for eligibility for employment.

Source: Quantum University

**Exhibit 2.4****Unaccredited Degree Granting Institution Disclosure Statement That Does Not Comply With Chapter 446E, HRS**

American World University is authorized to give post secondary degrees in the U.S.A. The following information about the university's accreditation.

**Accreditation?**

Accreditation is the validation off a university's instructional program by an agency authorized to render an academic evaluation of the institution's degree granting process. Accreditation is not generally practiced in countries outside of the United States, since Ministries of education in the various countries regulate their own colleges and universities. In the United States, there are regional accreditation associations, in addition to selected private organizations, which accredit specific subject areas (e.g. business, nursing). There is also a distance learning accreditation association which primarily accredits trade schools and a few regular degree granting correspondence universities. What is not known to most students is that the United States government does not control or regulate colleges, universities, or accreditation associations except in connection with the reimbursement of tuition fees to students who qualify for these funds. In a general legal sense, therefore, there are no federal enabling laws which allow colleges or accreditation associations to function. There are only for-profit and nonprofit organizations who make their own rules and regulations and who frequently "screen out" institutions of higher learning which are competitive with the larger residence schools in terms of student enrollment. Another organization recently formed is CHEA, the Council for Higher Education Association. CHEA is also privately operated but wields tremendous power over accreditation in the USA since its board members, who are self-perpetuating, are the heads of large residence schools whose enrollment has steadily dropped since 1996 due to the advent of distance learning. Recently, CHEA put out its first report on distance learning, a report which virtually ignores the dozens of privately owned alternative schools in the USA and which discusses distance learning as a phenomenon which will come to fruition some time in the future. Nothing could be farther from the truth, since it is clear that distance learning is sweeping the globe at an extremely rapid rate. In fact, it is estimated that, by the year 2010, distance learning and alternative education (via rapid communication and the Internet) will be the method of choice for more than 50% of all college students. Additionally, prior to the advent of WAUC (a global accreditation association) in 1993, few valid associations exist to authenticate degree programs of colleges and universities worldwide.

Source: American World University

The current law, which does *regulate* UDGI—in that it requires certain disclosures and prohibits certain conduct—does not address the educational quality of unaccredited schools.

Neither Chapter 446E, HRS, nor HB 1200, HD 2, addresses whether, as a matter of educational policy, UDGI should be allowed to operate in or from the state, and if so, in what fashion. The bill does not address whether certain minimum standards for post-secondary education in Hawai'i are sought to improve the state's reputation in the area of post-secondary education, preserve or enhance the reputations of accredited post-secondary institutions in the state, or prevent students with UDGI-issued degrees from misleading or attempting to mislead prospective employers. The department's position is that the level of regulation warranted depends on those educational policy determinations.

***OCP is already charged with and has been rigorously enforcing Chapter 446E, HRS***

One of the criteria in assessing whether to register, certify, or license an occupation or vocation (in this case, a business entity), is whether alternatives already exist. This includes considering whether existing laws, such as unfair and deceptive trade practices laws, may suffice. We found that violations of the provisions of Chapter 446E, HRS, are deemed unfair acts or practices and are subject to fines of \$500 to \$10,000 for each violation, as provided in Section 480-15.1, HRS. We also found that the agency responsible for enforcing such provisions, the Office of Consumer Protection, has been vigorously doing so and has had a significant impact on enforcing Chapter 446E, HRS, and the resulting number of unaccredited institutions operating in Hawai‘i.

Since 1997, OCP has initiated 51 legal actions against unaccredited degree granting institutions for violations of Chapter 446E, HRS. The office has its own legal staff to research and investigate violations and initiates enforcement actions against unaccredited institutions. Actions are handled by the circuit courts, which can issue judgments including penalties, sanctions/restitution, and service costs.

In 2000, OCP estimated the number of unaccredited institutions in Hawai‘i was about 100 to 150. According to an expert in non-traditional education, the high number of bogus institutions in Hawai‘i at the time resulted in it being “widely regarded as a laughingstock in the world of higher education.” The then-University of Hawai‘i vice president of planning and policy shared that view, saying, “Diploma mills give the state a negative reputation ... unaccredited institutions that are diploma mills devalue the quality of degrees for students.”

Since then, Hawai‘i’s reputation has changed. There are now an estimated 12 known UDGI in Hawai‘i (as shown in Exhibit 1.4). According to a 2011 report, Hawai‘i has a reputation for active prosecution of diploma mills. The OCP’s vigorous stance on enforcing Chapter 446E, HRS, has resulted in judgments awarded to the State in penalties, restitution, and service costs totaling over \$24.6 million. Exhibit 2.5 lists these actions by year and the amounts awarded to the State. Further details of these actions are presented in Appendix A.

**Exhibit 2.5**  
**OCP Enforcement Actions Against UDGLs and**  
**Resulting Penalties, 1997–2012**

Year	Number of Actions	Penalties, Sanctions/ Restitution, and Costs Awarded
1997	2	\$66,000
1999	4	\$1,734,450
2000	1	\$34,558
2001	7	\$2,371,000
2002	10	\$1,586,500
2003	5	\$1,385,000
2004	7	\$854,490
2005	2	\$16,508,143
2006	5	\$25,000
2007	3	\$33,500
2008	1	\$19,000
2009	3	\$32,000
2012	1	\$1,000
<b>Total</b>	<b>51</b>	<b>\$24,650,641</b>

Note: No enforcement actions were initiated in 1998, 2010, or 2011.

Source: Office of Consumer Protection

***All states, including Hawai‘i, have laws addressing unaccredited institutions***

In considering whether proposed regulatory legislation is warranted, we consider whether other states also regulate, and for the same reasons. We found that although Hawai‘i is the only state that does not regulate unaccredited institutions through either accreditation requirements or state approval, Hawai‘i does govern the institutions under Chapter 446E, *HRS Unaccredited Degree Granting Institutions*, thereby regulating their conduct by imposing certain requirements and prohibiting specific activities.

All states have laws addressing degree granting institutions. Thirty-six states require all degree granting institutions to be accredited. Another 13 states require all degree granting institutions to be licensed, certified, or authorized by the state. Exhibit 2.6 lists various types of approval required and agencies responsible for overseeing such approval.

**Exhibit 2.6**  
**Types of State Approval and Oversight Agencies**

State	Type of State Approval Required for Degree Granting Institutions to Operate in State	Oversight Authority
California	*	Bureau for Private Postsecondary Education
Florida	Licensure	Commission for Independent Education
Georgia	Licensure	Nonpublic Postsecondary Secondary Education Commission
Kansas	Certification	Board of Regents
Kentucky	Licensure	Council on Postsecondary Education
Missouri	Licensure	Department of Higher Education
North Carolina	Licensure	Board of Governors of the University of North Carolina
Oregon	Authorization	Higher Education Coordinating Commission
Tennessee	Authorization	Higher Education Commission, Division of Postsecondary School Authorization
Texas	Certification	Higher Education Coordinating Board
Utah	Registration	Department of Commerce, Division of Consumer Protection
Vermont	*	Agency of Education
Wisconsin	*	Education Approval Board

\*Not specified.

Source: Office of the Auditor

Utah’s regulatory structure is the most similar to Hawai‘i’s. Unaccredited degree granting institutions there must register and obtain a certificate of registration with the Division of Consumer Protection. Applicants wishing to use “college,” “university,” “institute,” or “institution” in their business names must be approved by the division. According to the manager of the division’s school section, this requirement serves as a “gatekeeper for schools coming into the state that may not be aware” of state approval requirements. The division can also initiate investigations.

The other 12 states that require state approval rather than accreditation use educational agencies to oversee the approval process. For example, in Texas, the Higher Education Coordinating Board gives certificates of authority to post-secondary institutions, which allows them to grant awards or degrees. In Oregon, the Office of Degree Authorization, a unit of the Higher Education Coordinating Commission, evaluates and approves all degree programs based on 20 state standards covering areas such as school administration and operations, curriculum and instruction, faculty qualifications, and hiring and employment policies. Authorized

schools are subject to ongoing full evaluation every two years for at least five years of operation provided there are no incidents of non-compliance.

**Online entities are already covered by Chapter 446E, HRS**

The resolution requesting this sunrise analysis asked that we determine whether the regulation of UDGI should also apply to institutions that are located out of state but enroll Hawai‘i residents. We found that the existing laws governing UDGI already apply to online institutions.

Part of Chapter 446E, HRS, requires any UDGI with a presence in Hawai‘i to designate and maintain an agent (for service of process purposes); *presence* is defined as offering courses, programs, or degrees or maintaining a campus, or an administrative, corporate, or other address in Hawai‘i. This appears to include online entities that offer courses, programs, or degrees to students residing in Hawai‘i. We note that OCP has successfully prosecuted at least one case against an out-of-state company. In 2003, American World University, an unaccredited institution that claimed it had a presence in Hawai‘i under Section 446E-1, HRS, was sued for failing to clearly disclose that it is not accredited. (Its non-compliant disclosure statement is shown in Exhibit 2.4.) The institution’s owner said she never had a student from Hawai‘i; nevertheless, the company was ordered to pay a \$125,000 judgment.

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**Status of Recommendations From 1993 LRB Report No. 5**

As requested in SCR No. 119, SD1 (2013), we examined the findings of the Legislative Reference Bureau (LRB)’s 1993 report, *Private Accreditation and State Authorization of Degree Granting and Non-degree Granting Institutions in Hawai‘i*, to determine whether the recommendations in that report have been implemented.

**Criteria for closing recommendations**

We considered recommendations “closed” for the following reasons:

- The recommendation was effectively implemented;
- An alternative action was taken that achieved the intended results; or
- The recommendation was not implemented despite the use of all feasible strategies.

In labeling the status of recommendations, we used the following definitions:

- **Closed:** Recommendation has been addressed and/or implemented.
- **Open:** Work on the recommendation has not started, or cannot start because a precursor event has not occurred.
- **Open but in progress:** The agency has taken action, but implementation of the recommendation is not complete.
- **Open and likely not to be pursued:** The agency has no intention of pursuing implementation of the recommendation.
- **Not applicable:** Recommendation is no longer applicable.
- **Did not assess:** Did not assess implementation of the recommendation.

***Two-thirds of LRB's recommendations have been addressed***

Of LRB's nine recommendations, we found that three are **open and not likely to be pursued** (33 percent); five have been addressed or implemented (**closed**) (56 percent); and one is **open but in progress** (11 percent). The LRB's recommendations to the DOE have not been implemented, but most recommendations to the Legislature have been addressed.

At the time of LRB's 1993 report, both accredited and unaccredited trade schools (private trade, technical, and vocational schools that do not grant degrees) were licensed by the DOE. The bureau reported that the DOE lacked adequate staffing for its licensing program, stating that for every 25 licensed schools, an agency should have at least one full-time employee. The addition of professional staff—including investigators, accountants, educators, and attorneys—was recommended, as well as annual site visits, teach-outs, tuition reimbursement funds, graduated fee schedules, and criminal record checks for school owners. We found these recommendations have not been implemented.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
<b>Recommendations to the Department of Education</b>			
(1) Consider adopting administrative rules that require schools to submit credible teach-out plans as a part of the licensure and re-licensure process.	A “teach-out plan” describes a school’s arrangements for continuing a student’s education should the school suddenly close.	<b>Open and likely not to be pursued</b>	The DOE’s administrative rules were last amended in March 2001, prior to LRB’s report. There have been no amendments to the rules since. Furthermore, DOE acknowledges it has not implemented LRB’s recommendations and continues to strongly support the transfer of this program out of the department, whose focus is on the delivery of K-12 instruction.
(2) Replace its flat fee schedule with either enrollment- or revenue-based schedules and charge supplemental fees for special burdens such as investigations or complaints.	LRB reported that the State Higher Education Executive Officers Association supported a combination of licensing fees and legislative appropriations and that two types of fee schedules were enrollment-based and institutional revenue-based schedules. These were justified on the grounds that larger schools pose greater regulatory burdens on a state.	<b>Open and likely not to be pursued</b>	The DOE continues to use a flat fee schedule. Furthermore, DOE acknowledges it has not implemented LRB’s recommendations and continues to strongly support the transfer of this program out of the department, whose focus is on the delivery of K-12 instruction.
<b>Recommendation to the Legislature</b>			
(3) Make funding available to hire a professional staff member to work exclusively with trade schools.	The DOE was understaffed according to “a rule of thumb of one employee to every 25 schools.” At the time there were 35 trade schools.	<b>Open and likely not to be pursued</b>	The DOE was not provided additional staff to administer its licensing program. Furthermore, DOE acknowledges it has not implemented LRB’s recommendations and continues to strongly support the transfer of this program out of the department, whose focus is on the delivery of K-12 instruction.

The bureau also found the State had no oversight agency or statutes relating to an institution’s degree-granting authority. At the time, the federal Higher Education Act required states to have regulatory mechanisms in place to conduct reviews of post-secondary institutions. Five of LRB’s six recommendations in this area, which primarily addressed proposed and existing legislation, have been addressed.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
<b>Recommendations to the Legislature</b>			
(4) Any proposed legislation regulating degree granting institutions should be referred to the State Auditor for a sunrise analysis.	Chapter 446D, HRS, the prior law governing unaccredited degree granting institutions, was on a sunset schedule. The bureau recommended that any new licensing law should follow the same procedure as a sunrise/sunset analysis enactment.	<b>Closed</b>	This current sunrise study meets the intent of the 1993 recommendation.
(5) A choice of oversight agency that would conform with the practice in other states is the University of Hawai'i system's Board of Regents.	All 11 states reviewed by the bureau chose an education agency to oversee private degree granting institutions. The popular choice of agency was a coordinating board or commission for a state's public colleges and universities.	<b>Closed</b>	Although the recommendation of having the Board of Regents as the oversight agency was not followed, a Post-Secondary Education Program was established within DCCA through Act 180, SLH 2013.
(6) Proposed legislation pertaining to regulating degree granting institutions should be modeled after statutes from other states.	The bureau found Hawai'i had "no statutes governing authorization of non-accredited, degree-granting post-secondary education institutions." Texas, Washington, Ohio, Illinois, and Maine were among 22 states found to have relatively strong statutes.	<b>Closed</b>	The intent of the recommendation has been met, as organizations outside Hawai'i have been contacted for assistance in strengthening Hawai'i's laws regulating post-secondary institutions.
(7) Consider incorporating accreditation into any proposed legislation affecting degree granting institutions.	Incorporating accreditation would avoid duplication of efforts between the State and private accrediting agencies. However, the bureau warned that states should retain ultimate responsibility for ensuring compliance with minimum quality standards and consumer protection laws.	<b>Open but in progress</b>	Act 180, SLH 2013 requires degree granting institutions seeking federal Higher Education Act (HEA) funds to be authorized by the State; and a requirement for state authorization is accreditation. However, we note that if an institution does not seek HEA federal funds, it need not be accredited to operate in Hawai'i. This recommendation is deemed 'open but in progress' because the accreditation requirement does not apply to UDGIs.

RECOMMENDATION	PURPOSE	STATUS	COMMENTS
(8) Amend the definition of “unaccredited institution” under Section 446E-1, HRS, by replacing “United States Commissioner of Education” with “United States Secretary of Education” and “provisionally accredited” with “preaccredited.”	Technical changes would provide clarity and conform to terms used in federal regulations.	<b>Closed</b>	Section 446E-1, HRS, was amended to replace “Commissioner of Education” with “Secretary” as suggested. Although “preaccredited” was not adopted, “provisionally accredited” was replaced with “a candidate for accreditation.”
(9) Coordinate the definition of “unaccredited institution” with the disclosure requirements for unaccredited institutions under Section 446E-2, HRS.	LRB concluded that provisionally accredited institutions were not “unaccredited” and therefore the disclosure requirements in Section 446E-2, HRS, did not apply. LRB suggested either deleting the reference to provisional accreditation in the definition of “unaccredited institution” or the language in the disclosure section that required provisionally accredited institutions to disclose their lack of full accreditation.	<b>Closed</b>	The 1999 Legislature removed the reference to “provisionally accredited” from the definition of “unaccredited institution” in Section 446E-2, HRS, by changing the phrase “which has not been accredited or provisionally accredited” to “that is not accredited or a candidate for accreditation.”

## Conclusion

The regulation of unaccredited degree granting institutions as proposed in House Bill No. 1200, House Draft 2, is unnecessary because existing laws already provide adequate consumer protection. Although Hawai‘i’s reputation for regulating diploma mills is lax, Hawai‘i is also known for actively prosecuting such mills. The 1999 Legislature added consumer safeguards, such as disclosures and a prohibited practices section, to Chapter 446E, HRS, in an effort to protect Hawai‘i’s residents. Hence, existing laws provide sufficient consumer protection against potential abuses by unaccredited degree granting institutions in Hawai‘i; however, we acknowledge this does not cover educational quality. In addition, the Office of Consumer Protection is already responsible for and has been actively enforcing Chapter 446E, HRS. We also found that all states, including Hawai‘i, have laws addressing unaccredited institutions and that online entities are covered by existing law.

Based on our analysis of HB 1200, HD 2, we conclude that a post-secondary authorization program regulating UDGIs is not necessary to comply with the Higher Education Act of 1965 because the accreditation requirement does not apply to UDGIs. Other flaws in the bill include the lack of a regulatory framework and prohibitive costs for such a program.

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## **Recommendation**

House Bill No. 1200, House Draft 2, of the 2013 Regular Session should not be enacted.

## Appendix A

### Details of Office of Consumer Protection Enforcement Actions Against Unaccredited Degree Granting Institutions, 1997–2012

No.	Action Date	Name of School	Penalties, Sanctions/ Restitutions, and Costs Awarded Against School	Amount Collected
1.	1997	American State University	\$36,000	\$36,000
2.	1997	Pacific Western University	\$30,000	\$30,000
3.	1999	Cambridge State University	\$50,000	\$50,000
4.	1999	Monticello University, Thomas Jefferson University	\$1,600,000	\$0
5.	1999	St. Mary's School of Medicine	\$50,000	\$0
6.	1999	Washington International University	\$34,450	\$34,450
7.	2000	University of Northern Washington	\$34,558	\$0
8.	2001	American Institute of Management Studies	\$500,000	\$0
9.	2001	Anglo American University	\$365,000	\$0
10.	2001	Frederick Taylor International University	\$35,000	\$35,000
11.	2001	Hawai'i American University	\$1,200,000	\$0
12.	2001	Lincoln International University	\$5,000	\$1,500
13.	2001	South Pacific University	\$256,000	\$6,000
14.	2001	Stanton University	\$10,000	\$10,000
15.	2002	American International University of Management and Technology	\$5,000	\$5,000
16.	2002	Atlantic International University	\$2,500	\$2,500
17.	2002	Brighton University	\$1,000,000	\$0
18.	2002	First Church of International Association of Christian Clinical Counselors	\$2,000	\$2,000
19.	2002	Honolulu University of Arts, Sciences, and Humanities	\$59,500	\$59,500
20.	2002	International East-West University	\$5,000	\$5,000
21.	2002	International University of Professional Studies	\$1,500	\$1,500
22.	2002	National University of America	\$5,000	\$5,000
23.	2002	Pacific Southern University	\$6,000	\$6,000
24.	2002	Pickering University	\$500,000	\$0
25.	2003	American University of Hawai'i	\$1,000,000	\$0
26.	2003	American World University	\$250,000	\$0
27.	2003	Kinsington University	\$30,000	\$0
28.	2003	United States Open University	\$5,000	\$5,000
29.	2003	University of East-West Alternative Medicine	\$100,000	\$0
30.	2004	American State University	\$0	\$0
31.	2004	Cambridge State University	\$27,990	\$0
32.	2004	Earthnet Institute	\$1,500	\$1,500
33.	2004	Marlborough University	\$250,000	\$0

No.	Action Date	Name of School	Penalties, Sanctions/ Restitutions, and Costs Awarded Against School	Amount Collected
34.	2004	Nation University	\$125,000	\$0
35.	2004	University of Advanced Research	\$250,000	\$0
36.	2004	Washington American Open University	\$200,000	\$0
37.	2005	Empire University	\$10,000	\$5,000
38.	2005	Hawai'i College of Pharmacy	\$16,498,143	\$1,498,143
39.	2006	Concordia Ivy College	\$10,000	\$0
40.	2006	Pacific Yale University	\$10,000	\$0
41.	2006	San Francisco International University	\$0	\$0
42.	2006	USA International University	\$5,000	\$0
43.	2006	Washington National University	\$0	\$0
44.	2007	Iond University	\$22,500	\$0
45.	2007	Kennedy Open University	\$1,000	\$0
46.	2007	Pacific Buddhist University	\$10,000	\$5,000
47.	2008	Stewart University of America	\$19,000	\$0
48.	2009	American Androgogy University	\$2,000	\$2,000
49.	2009	City University of Finance and Economics	\$30,000	\$0
50.	2009	East West University	\$0	\$0
51.	2012	Honolulu University	\$1,000	\$0
		<b>Total</b>	<b>\$24,650,641</b>	<b>\$1,806,093</b>

Source: Office of Consumer Protection

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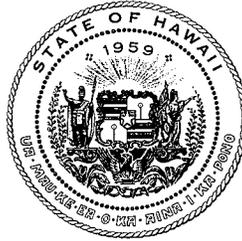
## Response of the Affected Agency

### Comments on Agency Response

We transmitted a draft of this report to the Department of Commerce and Consumer Affairs on January 13, 2014. A copy of the transmittal letter is included as Attachment 1. The department's response, received on January 22, 2014, is included as Attachment 2.

The department concurred with our conclusion that a post-secondary authorization program regulating UDGI is unnecessary. Regarding the number of UDGI physically located in Hawai'i, the department pointed out that its database of business registrants is not limited to UDGI and that there may be UDGI operating without a business registration, as registration is not mandatory.

STATE OF HAWAII  
**OFFICE OF THE AUDITOR**  
465 S. King Street, Room 500  
Honolulu, Hawai'i 96813-2917



**JAN K. YAMANE**  
Acting State Auditor

(808) 587-0800  
FAX: (808) 587-0830

January 13, 2014

**COPY**

The Honorable Keali'i S. Lopez  
Director  
Department of Commerce and Consumer Affairs  
335 Merchant Street  
Honolulu, Hawai'i 96813

Dear Ms. Lopez:

Enclosed for your information are three copies, numbered 6 to 8, of our confidential draft report, *Sunrise Analysis: Regulation of Unaccredited Degree Granting Institutions*. We ask that you telephone us by Wednesday, January 15, 2014, on whether or not you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Tuesday, January 21, 2014.

The Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jan K. Yamane".

Jan K. Yamane  
Acting State Auditor

Enclosures



NEIL ABERCROMBIE  
GOVERNOR

SHAN S. TSUTSUI  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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KEALI'I S. LOPEZ  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

RECEIVED

2014 JAN 22 AM 11:15

OFFICE OF THE AUDITOR  
STATE OF HAWAII

Ms. Jan K. Yamane  
Acting State Auditor  
Office of the Legislative Auditor  
465 S. King Street, Room 500  
Honolulu, Hawaii 96813-2917

Dear Ms. Yamane:

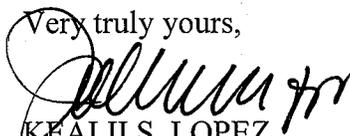
Thank you for providing the Department of Commerce and Consumer Affairs ("Department") the opportunity to comment on your draft report entitled "Sunrise Analysis: Regulation of Unaccredited Degree Granting Institutions."

We concur with the conclusion on page 31 of the report that a post-secondary authorization program regulating unaccredited degree granting institutions is not necessary. As you note in the report on page 18, adding a registration component to Chapter 446E, HRS, would do little to enhance existing consumer protection safeguards while significantly increasing the cost of regulation for both the State and the institutions.

Regarding the statement on page 6 of the draft report that there are 12 likely unaccredited degree granting institutions currently operating in Hawaii "as reported on DCCA's list of active business registrations", please note that DCCA does not have a list of active business registrations of unaccredited degree granting institutions. Our database reflects the names of business registrants of all types, including those with names that contain words such as "college" or "university". Also, entities can operate in the state without a business registration, as registration is not mandatory.

Thank you for the opportunity to comment. If you have any questions or comments, please call me at 586-2850.

Very truly yours,

  
KEALII S. LOPEZ  
Director

c: Jo Ann Uchida Takeuchi