



Brigham Young University–Hawaii
Office of Compliance & Ethics Research Memo
State Authorization

Law/Act:	State Authorization	
U.S. Code Citation:	20 U.S.C. §§ 1001(a)(2), 1099a(b), 1099c(a)	
Code of Federal Regulations Citation:	34 C.F.R. §§ 600.9, 668.43(a)(5)(v), (b)–(c)	
Hawaii State Regulations Citation:	HRS §305J	
Responsible Regulators:	U.S. Department of Education, Hawaii Department of Commerce and Consumer Affairs; NC-SARA (nongovernmental regulator)	
BYU–Hawaii Responsible Officer:	Vice President for Academics	
	Updated: April 2020	Updated By: EM
	Version 1.0	Effective Date: Nov. 8, 1965 (Higher Education Act), July 1, 2020 (federal regulations), January 10, 2020 (Hawaii SARA Policies)

PURPOSE

By requiring institutions of higher education (IHEs) to obtain and maintain legal authority to offer educational programs from the states where they operate, state authorization laws and regulations provide consumer protection for students.¹

HISTORY

State authorization requirements have been included in the Higher Education Act since its inception in 1965.² In 2010, the U.S. Department of Education (ED) published regulations requiring IHEs to be authorized in every state where they offer educational programs, including distance education programs.³ The 2010 regulations about distance education were later struck down by a federal court.⁴

In the absence of federal regulations on distance education and given the complexity of applying for authorization in individual states with varying requirements, regional education compacts (organizations that facilitate collaboration between collections of states) came together to create the State Authorization Reciprocity Agreements (SARA), which began operating in 2014.⁵ SARA is a series of agreements among member states that establishes a common set of standards and practices for distance education.⁶ Although participation in SARA is voluntary, states and IHEs that become SARA members and comply with the terms of the SARA manual are authorized to provide postsecondary

¹ ALEXANDRA HEGJI, CONG. RESEARCH SERV., R43159, INSTITUTIONAL ELIGIBILITY FOR PARTICIPATION IN TITLE IV STUDENT FINANCIAL AID PROGRAMS 10 (2019), <https://fas.org/sfp/crs/misc/R43159.pdf>.

² Higher Education Act, Public L. No. 89-329, § 801(a)(2), 79 Stat. 1219, 1269 (1965); *see also* DAVID A. TANDBERG ET AL., STATE HIGHER EDUCATION EXECUTIVE OFFICERS ASSOCIATION, IMPROVING STATE AUTHORIZATION: THE STATE ROLE IN ENSURING QUALITY AND CONSUMER PROTECTION IN HIGHER EDUCATION 7 (2019), https://sheeo.org/wp-content/uploads/2019/07/SHEEO_StateAuth.pdf.

³ Program Integrity Issues, 75 Fed. Reg. 66,832, at 66,946–66,947 (Oct. 29, 2010).

⁴ *Assoc. of Private Sector Colls. & Univs. v. Duncan*, 681 F.3d 427 (D.C. Cir. 2012); *accord* TANDBERG ET AL., *supra* note 3, at 8.

⁵ NAT'L COUNCIL FOR STATE AUTHORIZATION RECIPROCITY AGREEMENTS, STATE AUTHORIZATION RECIPROCITY AGREEMENTS MANUAL 2 (Jan. 1, 2020), https://www.nc-sara.org/sites/default/files/files/2020-02/NC-SARA_Manual_20.1_Final_2.6.20.pdf [hereinafter SARA MANUAL]; *see also* Regional Education Compacts, NC-SARA, <https://nc-sara.org/regional-education-compacts> (last visited Mar. 9, 2020) (listing the four education compacts, including the Western Interstate Commission for Higher Education, which covers Hawaii, Idaho, and Utah).

⁶ *About NC-SARA*, NC-SARA, <https://www.nc-sara.org/about-nc-sara> (last visited Mar. 18, 2020).



Brigham Young University–Hawaii
Office of Compliance & Ethics Research Memo
State Authorization

distance education in member states other than its home state.⁷ By 2020, all U.S. states had joined SARA except for California.⁸

In 2016, ED issued new regulations requiring an IHE to receive authorization from every state where it enrolls students, including distance education courses and programs, either through authorization from individual states or through SARA.⁹ The 2016 regulations were originally scheduled to become effective July 1, 2018.¹⁰ However, ED delayed the effective date of selected provisions.¹¹ Additional regulations were issued by ED on November 1, 2019, with an effective date of July 1, 2020.¹²

Pursuant to HRS §305J-16, Hawaii has adopted the requirements and policies of the Unified State Authorization Reciprocity Agreement and the State Authorization Reciprocity Agreements Manual (SARA Manual) of the National Council for State Authorization Reciprocity Agreements (NC-SARA).¹³

APPLICABILITY TO BYU–HAWAII

IHEs that wish to be eligible to participate in Title IV financial aid programs must meet federal and state authorization requirements.¹⁴ Likewise, IHEs that offer distance education are subject to the rules of each state where education is offered to students.¹⁵

As an eligible IHE for purposes of Title IV program participation, BYU–Hawaii needs to be and is authorized as a postsecondary educational institution in Hawaii.¹⁶ BYU–Hawaii also offers distance education, including through online classes, and maintains authorization from these other states as a participant of SARA.¹⁷

REQUIREMENTS

A. Federal Requirements

An IHE must be authorized to offer educational programs within its home state. Additionally, federal regulations also require IHEs that offer education to students in other states to meet the authorization requirements of those other states either individually or through a reciprocity agreement, determine the location of its students, and disclose certain information about occupationally-required state licensure and certification.

⁷ SARA MANUAL, *supra* note 6, § 5.1(a), at 36; TANDBERG ET AL., *supra* note 3, at 8. SARA’s definition of “distance education” is broader than the Higher Education Act’s definition. See 20 U.S.C. § 1003(7); 34 C.F.R. § 600.2 (defining “distance education” as a form of instruction that provides regular and substantive interaction between students and instructor by way of the internet, broadcasting, or audio conferencing).

⁸ SARA for States, NC-SARA, <https://www.nc-sara.org/sara-states> (last visited Mar. 18, 2020).

⁹ Program Integrity and Improvement, 81 Fed. Reg. 92,232 (Dec. 19, 2016) (to be codified in 34 C.F.R. pts. 600, 668).

¹⁰ *Id.* at 92,232.

¹¹ Program Integrity and Improvement, 83 Fed. Reg. 31,296 (July 3, 2018).

¹² Student Assistance General Provisions, 84 Fed. Reg. 58,834, 58,834 (Nov. 1, 2019) (to be codified in 34 C.F.R. pts. 600, 602, 603, 654, 668, 674).

¹³ Hawaii State Authorization Reciprocity Agreement (SARA) Policies, <https://cca.hawaii.gov/hpeap/files/2020/02/HPEAP-SARA-Policies-011020.pdf>; last accessed 5/1/2020.

¹⁴ 20 U.S.C. § 1001(a)(2) (2020) (defining the term “institution of higher education”).

¹⁵ 34 C.F.R. § 600.9(c) (2020).

¹⁶ State of Hawaii Post-secondary Education Authorization Program – Authorized Schools, <http://cca.hawaii.gov/hpeap/authorized-schools/>; last accessed 5/1/2020.

¹⁷ See Directory | NC-SARA, <https://www.nc-sara.org/directory> (listing SARA-participating institutions by state).



1. Home State Authorization

In order to legally operate postsecondary educational programs in a state where it is physically located, an IHE must receive authorization from the state either through state action or by exemption.¹⁸ An IHE is considered physically located in a state if it has an instructional campus or site within that state.¹⁹ An IHE must provide its enrolled and prospective students with the contact information for its authorizing state approval entity and any other relevant state official or agency so the students have the necessary information to file complaints against the IHE.²⁰ IHEs also need to make its approval documents available to any enrolled or prospective student upon request.²¹

2. Distance Education

An IHE must be legally authorized to provide distance education or correspondence courses programs in any state where it offers postsecondary education to students.²² An IHE that is authorized by its home state may receive authorization to provide distance education programs in other states by obtaining authorization from every state where it provides distance education or by complying with the terms of SARA, described below.²³ IHEs offering distance education programs must also comply with any additional requirements imposed by the individual states and must, upon request, document its compliance with those requirements to ED.²⁴

3. Determination of Student Location

An IHE must keep records of the physical location of its students to ensure it is authorized in the states where its students are located.²⁵ To that end, an IHE is required to determine the locations of its students and establish procedures for making that determination.²⁶ An IHE's procedures for determining student location may vary between groups of students, such as undergraduate and graduate students, but must include all students, including those in on-campus and distance education classes.²⁷ IHEs must determine a student's location at the time of initial enrollment in an educational program and again whenever a student formally provides information to the IHE of a location change to another state.²⁸ For purposes of this requirement, the time of the student's initial enrollment should not be confused with the time of the student's initial application.²⁹ IHEs are not required to determine a student's location every year.³⁰ Upon request, an IHE must provide ED with written documentation of its determination of student locations and the basis for that determination.³¹

¹⁸ 34 C.F.R. § 600.9(a)(1), (b); *accord* HEGJI, *supra* note 1.

¹⁹ U.S. DEP'T OF EDUC., FEDERAL STUDENT AID, FEDERAL STUDENT AID HANDBOOK 2-5 (2018-2019), <https://ifap.ed.gov/sites/default/files/attachments/2019-07/1819FSAHbkActiveIndex.pdf>.

²⁰ 34 C.F.R. § 668.43(b).

²¹ *Id.*

²² *Id.* § 600.9(c).

²³ *Id.* § 600.9(c)(1).

²⁴ *Id.*

²⁵ *Id.* § 600.9(c)(2)(i).

²⁶ *Id.* §§ 600.9(c)(2), 668.43(c)(3)(ii)(A).

²⁷ Student Assistance General Provisions, 84 Fed. Reg. 58,834, at 58,844, 58,887 (Nov. 1, 2019).

²⁸ 34 C.F.R. §§ 600.9(c)(2)(iii), 668.43(c)(3)(ii)(C).

²⁹ 84 Fed. Reg. 58,834, at 58,844.

³⁰ *Id.* at 58,844.

³¹ 34 C.F.R. §§ 600.9(c)(2)(iii), 668.43(c)(3)(ii)(B).



4. Disclosures Regarding State Licensure and Certifications

If an IHE offers a program designed to meet the educational requirements for a specific occupationally-required professional license or certificate—or advertises a program as meeting such requirements—it must list the states where it has determined the program’s curriculum satisfies the educational requirements, the states where it has determined the curriculum does not satisfy the educational requirements, and the states where it has not made a determination.³² This information must be made readily available to enrolled and prospective students.³³ IHEs are under no obligation to determine if their programs satisfy state requirements for licensure or certification.³⁴ However, if they do, they must disclose the results of the determination.³⁵ The requirement to make information readily available may be satisfied by including the information on the IHE’s website or in its course catalog.³⁶

If an IHE determines that a program does not meet the requirements for licensure or certification in a state where a prospective student is located, the IHE must provide direct, written notice of this determination to the student before the student enrolls in the educational program.³⁷ An IHE must also provide direct, written notice to a student prior to enrollment if the IHE has not determined whether a program meets the requirements for licensure or certification in the student’s state.³⁸ If an IHE determines that a program intended or advertised to meet the requirements for a specific occupationally-required professional license or certification does not meet the state’s educational requirements for licensure or certification in a state where a student who is currently enrolled in the program is located, it must provide written notice to the student within 14 days of the determination.³⁹ The direct, written notices may be sent via email or other electronic communication.⁴⁰

5. Additional Locations, Foreign Locations, and Branch Campuses

An IHE and its additional locations—including branch campuses—must comply with federal disclosure requirements, including the disclosure of the student complaint process offered by the IHE’s state.⁴¹ To be considered an additional location of an IHE, a location must establish a physical presence, offer at least 50 percent of a program, and be “geographically apart from the main campus of the institution[.]”⁴² An additional location is considered a branch campus if it is also “independent of the main campus of the institution,” which means it “(1) [i]s permanent in nature; (2) [o]ffers courses in educational programs leading to a degree, certificate, or other recognized educational credential; (3) [h]as its own faculty and administrative or supervisory organization; and (4) [h]as its own budgetary and hiring authority.”⁴³

An IHE authorized by a U.S. state may establish foreign locations and branch campuses in foreign countries if it fulfills the requirements for legal authorization established by the relevant country.⁴⁴

³² *Id.* § 668.43(a)(5)(v) (making disclosure requirements that were previously codified in 34 C.F.R. § 668.50 and applicable only to students in distance education program applicable to all IHE students).

³³ *Id.* § 668.43(a).

³⁴ 84 Fed. Reg. at 58,909.

³⁵ *Id.* at 58,886.

³⁶ *Id.* at 58,888.

³⁷ 34 C.F.R. § 668.43(c)(1).

³⁸ *Id.*

³⁹ *Id.* § 668.43(c)(2).

⁴⁰ *Id.* § 668.43(c)(3)(i).

⁴¹ *Id.* § 600.9(d)(3).

⁴² *Id.* § 600.2 (defining additional location).

⁴³ *Id.* § 600.2 (defining branch campus).

⁴⁴ *Id.* § 600.9(d)(1)(i)–(ii), (iv), (2).



Additionally, any international location that offers 50 percent or more of an educational program must be approved by the IHE's accrediting agency, be reported to the state where the IHE is authorized, and comply with any limitations imposed by the state.⁴⁵

B. State of Hawaii Requirements

A postsecondary school that operates in Hawaii must be accredited and receive authorization from the Director of the Hawaii State Department of Commerce and Consumer Affairs.⁴⁶

C. SARA Requirements

Institutional participants of SARA are required to comply with the terms set forth in the SARA Manual, some of which are described below.⁴⁷

1. Institutional Participation Requirements

To participate in SARA, an institution must be

- a degree-granting institution,
- physically located in a SARA member state,
- legally authorized to award degrees, and
- accredited by an accrediting agency that is recognized by ED and whose scope of recognition includes distance education.⁴⁸

Private institutions must also demonstrate their financial responsibility in order to be eligible for SARA participation.⁴⁹ Institutions that participate in Title IV programs may disclose their ED-calculated financial responsibility composite score to demonstrate this responsibility.⁵⁰

Institutions that participate in SARA must annually report the number of students enrolled and the number of students enrolled exclusively in distance education courses.⁵¹ This number must be disaggregated by the state, territory, or district in which the students are located and must include the students of all courses offered, whether or not those courses are part of a degree-granting program.⁵² Institutions must also annually report the number of students engaged in certain experiential learning placements (such as internships, rotations, or student teaching), likewise disaggregated by state.⁵³

2. Application and Renewal

To apply for participation in SARA, an eligible Institution must submit completed application forms that are signed by the institution's CEO or chief academic officer and pay a state-specific fee.⁵⁴ The institution must renew its SARA participation each year and pay a renewal fee.⁵⁵

⁴⁵ *Id.* § 600.9(d)(1)(iii), (v)–(vi).

⁴⁶ HRS §305J-8.

⁴⁷ SARA MANUAL, *supra* note 6, at 2.

⁴⁸ *Id.* at 19.

⁴⁹ *Id.*

⁵⁰ *Id.* at 15.

⁵¹ *Id.* at 44.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Hawaii State Authorization Reciprocity Agreement (SARA) Policies, <https://cca.hawaii.gov/hpeap/files/2020/02/HPEAP-SARA-Policies-011020.pdf>; last accessed 5/1/2020.

⁵⁵ *Id.*



In Hawaii, institutions that seek participation in SARA may do so by submitting an application in the form required under NC-SARA and provide documentation that they are accredited by a federally-recognized accrediting agency.⁵⁶

PENALTIES

A. Federal Penalties

If an IHE fails to obtain—or loses—its state authorization, then it is no longer eligible to be designated an institution of higher education, which is necessary to receive Title IV program funds.⁵⁷

B. State of Hawaii Penalties

Postsecondary schools in Hawaii may have their state authorization denied, suspended, or terminated if they fail to comply with the requirements described in their applications for authorization or reauthorization.⁵⁸ The Department of Commerce and Consumer Affairs may investigate complaints of possible violations based on information received concerning possible violations.⁵⁹

C. SARA Penalties

Failure to comply with SARA requirements, such as annual reporting or fee payment, may result in an institution being placed on provisional status or being disapproved for continued SARA participation.⁶⁰

COMPLIANCE CALENDAR

To renew its participation in SARA, an IHE must submit an annual application for participation renewal.⁶¹ The annual renewal period begins with notice from NC-SARA. Upon issuance of the renewal notice, an institution has 30 days to complete and submit the renewal applications.⁶² The annual data reporting window for NC-SARA is May 15 to June 15.⁶³

STAYING UP-TO-DATE

The following websites provide valuable information regarding this law and its applicability.

DOCUMENT/REFERENCE	DESCRIPTION
NC-SARA Homepage	The website of NC-SARA provides numerous resources and up-to-date news on SARA.
Hawaii Department of Commerce and Consumer Affairs Hawaii State Authorization Reciprocity Agreement (SARA) Policies	Policies adopting the SARA policies.
History of State Authorization (2010–Present)	The WCET (WICHE Cooperative for Educational Technologies) has compiled a history of state

⁵⁶ *Id.*

⁵⁷ 20 U.S.C. § 1001(a)(2) (2020).

⁵⁸ Hawaii State Authorization Reciprocity Agreement (SARA) Policies, <https://cca.hawaii.gov/hpeap/files/2020/02/HPEAP-SARA-Policies-011020.pdf>; last accessed 5/1/2020.

⁵⁹ *Id.*

⁶⁰ SARA MANUAL, *supra* note 6, at 44 (noting that states will begin considering institutional compliance with reporting requirements during institutions' renewal applications in 2021).

⁶¹ Hawaii State Authorization Reciprocity Agreement (SARA) Policies, <https://cca.hawaii.gov/hpeap/files/2020/02/HPEAP-SARA-Policies-011020.pdf>; last accessed 5/1/2020.

⁶² See SARA MANUAL, *supra* note 6, at 27.

⁶³ NC-SARA, 2020 DATA REPORTING HANDBOOK 2-4 (2020), https://www.nc-sara.org/sites/default/files/files/2020-03/2020_DataReportingHandbook_FINAL.pdf.



Brigham Young University–Hawaii
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DOCUMENT/REFERENCE	DESCRIPTION
	authorization that reflects all of the legislation on the subject since 2010.



Attachment 1

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Office of Compliance Research Memo
State Authorization

State Authorization Compliance Checklist

Location Determination and Disclosures to Prospective and Enrolled Students

Location Determination

(34 C.F.R. §§ 600.9(c)(2)(i), 668.43(c)(3)(ii))

- ☐ Determine student location at time of initial enrollment in an educational program (not initial application)
- ☐ Determine student location whenever a student formally provides information of a location change
- ☐ Maintain written documentation of the determination of a student's location (written procedures)

Disclosure 1 – General Disclosure to Enrolled and Prospective Students

(34 C.F.R. § 668.43(a)(5)(v))

- ☐ Applies to programs intended to meet the educational requirements for a specific occupationally-required professional license or certification or programs advertised to meet such requirements
- ☐ The university must disclose the states for which it has determined that a program **satisfies** educational requirements for licensure or certification
- ☐ The university must disclose the states for which it has determined that a program **does not satisfy** educational requirements for licensure or certification
- ☐ The university must disclose the states for which **no determination** on whether a program meets the educational requirements for licensure or certification has been made
- ☐ Disclosure must be readily available (may be satisfied by including the information on a website or course catalog)

Disclosure 2 – Direct Disclosure to Prospective Students (34 C.F.R. § 668.43(c)(1))

- ☐ Applies to programs intended to meet the educational requirements for a specific occupationally-required professional license or certification or programs advertised to meet such requirements
- ☐ In a direct, written notice to a prospective student prior to the student's enrollment in a program, the university must disclose if it has determined a program **does not meet** the requirements for licensure or certification in the state where the student is located
- ☐ In a direct, written notice to a prospective student prior to the student's enrollment in a program, the university must disclose if it **has not determined** whether a program meets the requirements for licensure or certification in the state where the student is located
- ☐ Disclosures must be made directly to the student in writing, which may include email or other electronic communication

Disclosure 3 – Direct Disclosure to Enrolled Students (34 C.F.R. § 668.43(c)(2))

- ☐ Applies to programs intended to meet the educational requirements for a specific occupationally-required professional license or certification or programs advertised to meet such requirements
- ☐ In a direct, written notice to an enrolled student, the university must disclose if it determines a program **does not meet** the requirements for licensure or certification in the enrolled student's location
- ☐ The disclosure must be sent within 14 days of the determination that the program does not meet licensure or certification requirements
- ☐ Disclosures must be made directly to the student in writing, which may include email or other electronic communication