



Brigham Young University–Hawaii
Office of Compliance & Ethics Research Memo
Higher Education Act: Information Disclosures

Law/Act:	Higher Education Act: Information Disclosures	
U.S. Code Citation:	20 U.S.C. § 1092	
Code of Federal Regulations Citation:	34 C.F.R. §§ 668.41–668.49	
Responsible Regulator:	U.S. Department of Education	
BYU–Hawaii Responsible Officer:	VP for Student Development & Services, VP for Academics, VP of Administration	
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I. PURPOSE

The primary purpose of the Higher Education Act (HEA) is “to strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary and higher education,” allowing lower income students the opportunity to receive a college education.¹ To help achieve this aim, the law details certain information that higher education institutions must disclose to prospective and enrolled students.²

II. HISTORY

When first signed into law in 1965, the HEA did not include any provisions regarding information that institutions of higher education needed to disclose to their students.³ It was not until 1976 that a section was added requiring institutions to disclose and disseminate information about student financial assistance, as well as some information about the institution itself.⁴ In 1980, the section about disclosures was rewritten and assigned to the U.S. Code section where it can still be found today.⁵ Since then, the disclosures requirement has been amended several times to address unclear wording and expand the information that must be disclosed.⁶ As of 2018, the Senate education committee was holding hearings for the next HEA reauthorization.⁷

III. APPLICABILITY TO BYU–Hawaii

The federal requirement to “carry out information dissemination activities for prospective and enrolled students” applies to each eligible institution.⁸ For purposes of information dissemination, an “eligible institution” is an institution of higher education in any state that admits only high school graduates (or students with a recognized equivalent of a high school diploma), has legal authorization within a state to provide post-secondary educational programs, provides degree programs, is public or nonprofit, is nationally accredited, and participates in any student financial aid program outlined in the HEA.⁹ BYU–

¹ Higher Education Act of 1965, Pub. L. No. 89-329, § 101(a), 79 Stat. 1219, 1219.

² 20 U.S.C. § 1092(a)(1) (2018).

³ See generally Higher Education Act of 1965.

⁴ Education Amendments of 1976, Pub. L. No. 94-482, § 131, 90 Stat. 2081, 2148.

⁵ Education Amendments of 1980, Pub. L. No. 96-374, § 451, 94 Stat. 1367, 1449; 20 U.S.C. § 1092.

⁶ Higher Education Amendments of 1992, Pub. L. No. 102-325, § 486, 106 Stat. 448, 620; Higher Education Amendments of 1998, Pub. L. No. 105-244, § 486, 112 Stat. 1581, 1741; Higher Education Opportunity Act, Pub. L. No. 110-315, § 488, 122 Stat. 3078, 3293 (2008).

⁷ Allie Bidwell, *Senate Education Committee Dives into Aid Simplification, Transparency*, NAT’L ASS’N STUDENT FIN. AID ADMINISTRATORS (Jan. 19, 2018), <https://www.nasfaa.org/news-item/14153/Senate-Education-Committee-Dives-Into-Aid-Simplification-Transparency>.

⁸ 20 U.S.C. § 1092(a)(1).

⁹ 20 U.S.C. § 1094(a); *id.* § 1001(a) (defining institution of higher education).



Hawaii participates in federal financial aid programs as outlined in the HEA¹⁰ and meets the HEA definition of an institution of higher education.¹¹ Therefore, BYU–Hawaii is required to carry out the “information dissemination activities” described in the HEA.¹²

IV. REQUIREMENTS

The HEA requires higher education institutions to disclose certain information about the institution itself and all information regarding financial assistance which is covered under the HEA, particularly for prospective and enrolled students.¹³ The HEA also requires higher education institutions to publicize other information that pertains to prospective and enrolled students, employees, and the general public.¹⁴ Some information must be disseminated to each relevant individual (i.e. as a notice),¹⁵ while other information simply must either be disclosed on a website or made available upon request.¹⁶

A. Designated Employee

Each institution must designate an employee or group of employees, who are available on a full-time basis, to help enrolled and prospective students obtain the information disseminated.¹⁷ If only one employee is designated, that person must be available during normal working hours; if multiple persons are designated, their work schedules must allow at least one to be available.¹⁸ Each institution must include the titles of the designated employees, and note how and where to contact them, in the annual notice of disclosed information to prospective and enrolled students.¹⁹

B. Annual Notice to Enrolled Students

Annually, each eligible institution must distribute to all enrolled students a notice of the availability of the following information:²⁰

- Designated employee contact (see section A)
- General disclosures (see section C)
- Annual security report and annual fire safety report (see section D)
- Student body diversity (see section E)
- Vaccination policies (see section F)
- Athletic program participation rates and financial support data (see section G)

¹⁰ *Federal Aid*, BYU–HAWAII FIN. AID, <https://financialaid.byuh.edu/> (last accessed 5/5/2020).

¹¹ *Directory*, WASC Senior College and University Commission, <https://www.wscuc.org/institutions> (last accessed 5/5/2020) (confirming that BYU–Hawaii awards bachelor’s degrees, is nonprofit, and is nationally accredited); *Authorized Schools*, HAWAII DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS (DCCA), <http://cca.hawaii.gov/hpeap/authorized-schools/> (last accessed 5/5/2020).

¹² 20 U.S.C. § 1092(a)(1).

¹³ *Id.*

¹⁴ *E.g., id.* § 1092(f)(1), (g)(3).

¹⁵ 34 C.F.R. § 668.41(c) (2018); *see also id.* § 668.41(a) (defining notice).

¹⁶ 34 C.F.R. § 668.41(b), (d), (g)(1).

¹⁷ 20 U.S.C. § 1092(c); 34 C.F.R. § 668.44(a)(1). The requirement for an employee to have full-time availability may be waived if the institution has a small enrollment and insufficient demand; a waiver requires application to the Department of Education. 34 C.F.R. § 668.44(b). Even if a waiver is granted, a designated employee must be available on a part-time basis. *Id.* § 668.44(c).

¹⁸ 34 C.F.R. § 668.44(a)(2)–(3).

¹⁹ 20 U.S.C. § 1092(a)(1)(H); 34 C.F.R. § 668.43(a)(8).

²⁰ 20 U.S.C. § 1092(a)(1); 34 C.F.R. § 668.41(c).



- FERPA notice (see section H)²¹
- Drug violations (see section I)

In the notice, the institution must list and briefly describe the information disclosed.²² This notice may be distributed via U.S. mail, campus mail, or email.²³ Additionally, the notice must include a statement that explains how to fully obtain the required information listed and described in this communication.²⁴ If the institution chooses to disclose this information by posting it on a website, the exact web address must be given in the notice.²⁵ It appears permissible to combine the information into a single notice.²⁶

C. General Disclosures

The institution must publish and make readily available upon request to current and prospective students the information described below.²⁷

1. *Financial assistance available to enrolled students*

Institutions must publish all information about the financial aid programs available to students.²⁸ They must also publish the terms and conditions of student loans under various federal loan programs.²⁹ Specifically, the following information must be disclosed for each available financial aid program:

- **Eligibility information.** Student eligibility requirements, criteria for selecting recipients from the group of eligible applicants, criteria for determining the amount of the student's award, criteria for continuing eligibility, standards of progress that a student must meet to continue receiving assistance, and criteria by which a student who has lost eligibility may re-establish eligibility³⁰
- **Procedures.** The procedures and forms students need in order to apply for assistance and the methods by which financial aid will be disbursed (including how often it will be disbursed)³¹
- **Terms and conditions.** The terms of any loan repayments, and general terms and conditions applicable to any employment provided to the student as part of a financial aid package³²
- **Exit counseling.** A description of the exit counseling information given to students prior to their completion at the institution³³

²¹ 20 U.S.C. § 1092(a)(1); 34 C.F.R. § 668.41(c)(1); *see also* 34 C.F.R. § 99.7 (describing FERPA's annual notice requirement).

²² 20 U.S.C. § 1092(a)(1); 34 C.F.R. § 668.41(c)(1).

²³ 34 C.F.R. § 668.41(a) (defining notice).

²⁴ *Id.* § 668.41(c)(1).

²⁵ *Id.* § 668.41(c)(2).

²⁶ *See* 20 U.S.C. § 1092(a)(1) (requiring distribution of a list of all information that must be provided); 34 C.F.R. § 668.41(c)(1) (referencing a notice addressing multiple categories of information).

²⁷ 20 U.S.C. § 1092(a)(1).

²⁸ 20 U.S.C. § 1092(a)(1)(A); 34 C.F.R. § 668.42(a).

²⁹ 34 C.F.R. § 668.42(a) (referencing the Direct Loan, Perkins Loan, and FFEL programs). Loans under the FFEL program have been discontinued. *See Federal Family Education Loan (FFEL) Program*, U.S. DEP'T EDUC., <https://www2.ed.gov/programs/ffel/index.html> (last visited Apr. 17, 2018).

³⁰ 20 U.S.C. § 1092(a)(1)(D), (K); 34 C.F.R. § 668.42(b)(2)-(4), (c)(1)-(2).

³¹ 20 U.S.C. § 1092(a)(1)(B)-(C); 34 C.F.R. § 668.42(b)(1), (c)(3).

³² 20 U.S.C. § 1092(a)(1)(D), (M); 34 C.F.R. § 668.42(c)(4)-(5).

³³ 34 C.F.R. § 668.42(c)(6); *see also* 20 U.S.C. § 1092(b) (detailing more information about exit counseling).



Any borrowers of the institution must be given a notice about the availability of the National Student Loan Data System, which borrowers can use to obtain information on the status of their loans.³⁴

2. Institution

The following information about the institution must be readily available to all enrolled or prospective students:

- **Cost of Attendance.** Tuition and fees charged, estimated costs of books and supplies, estimated costs of room and board, estimated transportation costs, and any additional costs for any program a student is enrolled in or has interest in³⁵
- **Refund Policy.** Any refund policy for return of unearned tuition/fees or other refundable costs³⁶
- **Withdrawal.** Requirements and procedures for officially withdrawing³⁷
- **Return of Grants and Loans.** Summary of requirements for return of title IV grant and loan assistance³⁸
- **Academic Program.** Academic programs offered, including “current degree programs and other educational and training programs,” any physical facilities related to an academic program, the institution’s faculty and other instructional personnel, and any plans for improving an academic program already in existence³⁹
- **Accrediting and Licensing Bodies.** “Names of associations, agencies, or governmental bodies which accredit, approve, or license the institution and its programs” and the procedures for requesting to obtain a copy or review accreditation documents⁴⁰ as well as contact information for filing complaints with the school’s accreditor and with its approval or licensing entity⁴¹
- **Services for Disabled Students.** Descriptions of services and facilities that are available for students with disabilities, including those with intellectual disabilities⁴²
- **Study Abroad.** A statement saying a student’s enrollment in study abroad programs that are approved for credit by the home institution may be considered enrollment at the home institution for purposes of applying for financial assistance⁴³
- **Copyright Policies.** Policies and sanctions related to copyright infringement, including a statement that explicitly informs students that the distribution of copyrighted material may subject the students to civil and criminal liabilities, a summary of the penalties for violating federal copyright laws, and a description of institutional policies regarding unauthorized

³⁴ 20 U.S.C. § 1092(b)(1)(A)(ix).

³⁵ 20 U.S.C. § 1092(a)(1)(E); 34 C.F.R. § 668.43(a)(1).

³⁶ 20 U.S.C. § 1092(a)(1)(F)(i); 34 C.F.R. § 668.43(a)(2).

³⁷ 20 U.S.C. § 1092(a)(1)(F)(iii); 34 C.F.R. § 668.43(a)(3).

³⁸ 20 U.S.C. § 1092(a)(1)(F)(ii); 34 C.F.R. § 668.43(a)(4); see 34 C.F.R. § 668.22 (discussing “treatment of title IV funds when a student withdraws”).

³⁹ 20 U.S.C. § 1092(a)(1)(G); 34 C.F.R. § 668.43(a)(5).

⁴⁰ 20 U.S.C. § 1092(a)(1)(J). While not specifically required to be listed in the aforementioned annual notice, upon request, any enrolled or prospective student must be given access to a copy of the documents describing the institution’s accreditations and its approval or licensing. 34 C.F.R. § 668.43(b).

⁴¹ 34 C.F.R. § 668.43(b).

⁴² 20 U.S.C. § 1092(a)(1)(I); 34 C.F.R. § 668.43(a)(7).

⁴³ 20 U.S.C. § 1092(a)(1)(N); 34 C.F.R. § 668.43(a)(9).



peer-to-peer file sharing, including the disciplinary actions taken against students who illegally download or distribute copyrighted materials using institution's IT system⁴⁴

- **Transfer of Credit Policies.** A description of the institution's transfer of credit policies and a list of other institutions with which it has an articulation agreement⁴⁵
- **Written Arrangements to Provide Education.** A description of the written arrangements the institution has made for students who receive a portion of their education from another institution⁴⁶

3. *Retention Rate*

The institution's retention rate as reported to the Integrated Postsecondary Education Data System (IPEDS), needs to be made available to prospective students upon request prior to the student's enrolling or entering into any financial obligation to the university.⁴⁷

4. *Graduation Rate and Transfer-Out Rate*

Annually by July 1, each institution must produce and make available the completion or graduation rate and, if applicable, transfer rate of its certificate- or degree-seeking, full-time, undergraduate students.⁴⁸ A separate report showing these rates for students receiving athletically-related student aid is required by the same deadline.⁴⁹

Additionally, when offering athletically related student aid, the institution must provide the report about student athletes to prospective student athletes, their parents, their high school coach, and their guidance counselor.⁵⁰ However, if the institution is part of a national collegiate athletic association that compiles and distributes comparable data to all U.S. secondary schools, then it is necessary to distribute the report to only the prospective student athlete and their parents.⁵¹

Rate information must be broken down by gender, major racial/ethnic subgroups, and type of federal grant or loan received.⁵² This information needs to be made available to prospective students prior to the student's enrolling or entering into any financial obligation to the university.⁵³

Students do not need to be included in the calculation of graduation or transfer-out rates if they have left school to serve in the armed forces, to serve on an official church mission, to serve with a federal

⁴⁴ 20 U.S.C. § 1092(a)(1)(P); 34 C.F.R. § 668.43(a)(10).

⁴⁵ 20 U.S.C. § 1092(h)(1); 34 C.F.R. § 668.43(a)(11).

⁴⁶ 34 C.F.R. § 668.43(a)(12); *see id.* § 668.5 (discussing these written arrangements).

⁴⁷ 20 U.S.C. § 1092(a)(1)(U); 34 C.F.R. § 668.41(d)(3)-(4).

⁴⁸ 20 U.S.C. § 1092(a)(1)(L), (3)(A); 34 C.F.R. § 668.45(a)(5); *see also* 34 C.F.R. § 668.45(b)-(d) (detailing the specific methods for how an institution should prepare these rates).

⁴⁹ *See* 20 U.S.C. § 1092(e)(1) (requiring submission of an annual report to the U.S. Department of Education that breaks down information by race and gender within each sport); 34 C.F.R. § 668.41(f)(2) (setting forth deadline of July 1 to submit report); *id.* § 668.48(a) (detailing contents of report that must be produced by July 1). This report must include rates from the four most recent graduating classes of entering students. *Id.* § 668.48(a)(1)(v)-(vi).

⁵⁰ 20 U.S.C. § 1092(e)(2); 34 C.F.R. § 668.41(f)(1)(i).

⁵¹ 20 U.S.C. § 1092(e)(2) (stating that "the distribution of the compilation of such data to all secondary schools in the United States shall fulfill the responsibility . . . to provide information to a prospective student athlete's guidance counselor and coach"); 34 C.F.R. § 668.41(f)(1)(ii) (noting the same option for providing the information to the high school coach and guidance counselor).

⁵² 34 C.F.R. § 668.45(a)(6).

⁵³ *Id.* § 668.41(d)(4).



foreign aid service (such as the Peace Corps), because they have become totally and permanently disabled, or because they are deceased.⁵⁴ If these exceptions represent more than twenty percent of the student body, recalculations must be made on a different basis.⁵⁵

An institution belonging to an athletic association or conference that already publishes substantially comparable data for the public does not need to prepare or publish graduation rate data.⁵⁶ Even so, there is no exception from the requirement to prepare and provide the report on student athlete graduation rates to the federal government and to prospective student athletes and their parents.⁵⁷

5. Graduate Placement Data

Institutions must gather and disclose information regarding the placement of the graduates of the institution's degree or certificate programs in employment, and the types of employment obtained.⁵⁸ Any placement rates calculated must also be disclosed.⁵⁹ Similarly, information about the types of graduate and professional education that graduates of institutions' four-year degree programs enroll must also be gathered and disclosed.⁶⁰

D. Security and Crime Report

Under the Clery Act, an annual security report must be distributed to all enrolled students and current employees by October 1 each year.⁶¹ Additionally, an institution that has on-campus housing must distribute a fire safety report to its students and employees by October 1 each year.⁶² Notices of the two reports may be disseminated together, but the title must clearly state that information for each report is present.⁶³

In addition to distributing a copy of the security report to enrolled students and current employees, the institution must notify prospective students and prospective employees about the reports' availability, describe its contents, and give an opportunity to request a copy.⁶⁴

⁵⁴ *Id.* § 668.45(d)(1); *see also* 20 U.S.C. § 1092(a)(4)(A) (identifying a few of the same permissible exclusions).

⁵⁵ 34 C.F.R. § 668.45(d)(2).

⁵⁶ 20 U.S.C. § 1092(a)(5); 34 C.F.R. § 668.45(e). In such case, a waiver—sought by written application—is required from the U.S. Department of Education. 34 C.F.R. § 668.45(e)(3).

⁵⁷ *See* 34 C.F.R. § 668.45(e)(2) (noting the limited nature of the waiver); *id.* § 668.41(f) (requiring that the report on student athlete graduation rates be given to prospective student athletes, parents, high school coach, and guidance counselor).

⁵⁸ 20 U.S.C. § 1092(a)(1)(R); 34 C.F.R. § 668.41(d)(5).

⁵⁹ 34 C.F.R. § 668.41(d)(5)(iii).

⁶⁰ 20 U.S.C. § 1092(a)(1)(S); 34 C.F.R. § 668.41(d)(6).

⁶¹ 20 U.S.C. § 1092(a)(1)(O), (f)(1); *see* 34 C.F.R. § 668.41(e)(1) (requiring report distribution by October 1). This distribution can be accomplished through an online posting if the institution distributes a specific detailed notice that contains a direct link the report's URL. 34 C.F.R. § 668.41(c)(2), (e)(1)(iii), (2)-(3).

⁶² 20 U.S.C. § 1092(a)(1)(T), (i)(1); *see also* 34 C.F.R. § 668.49(b) (detailing the regulations for fire safety policies).

⁶³ 34 C.F.R. § 668.41(e)(6).

⁶⁴ 34 C.F.R. § 668.41(e)(4).



E. Student Body Diversity

The diversity of each institution must be disclosed, including the percentage of enrolled, full-time students who are male, are female, receive a Federal Pell Grant, and are a self-identified member of a racial or ethnic group.⁶⁵

F. Vaccination Policies

Each institution of higher education must disclose institutional policies regarding vaccinations.⁶⁶

G. Athletic Program Participation Rates and Financial Support Data

By October 15 each year, an institution that has an intercollegiate athletic program must make its athletic program participation rates and financial support data available to enrolled students, prospective students, and the public.⁶⁷ This information must be easily accessible, and a notice must be provided to enrolled and prospective students of their right to request this report.⁶⁸ The report must contain the following information⁶⁹:

- total number of male and female full-time undergraduate students attending the institution
- listing of intercollegiate varsity teams for the institution and data for each team about total number of participants, number of those who participate on other varsity teams,⁷⁰ operating expenses, gender of head coach, number of male assistant coaches, number of female assistant coaches, and full- or part-time status of coaches
- Total spent on athletically related student aid separately for men's and women's teams overall and ratio of awards to male athletes and female athletes
- Recruiting expenses broken down by men's and women's teams overall
- revenues and expenses data (some of which must be aggregated and compared for men and women sports), including the average institutional salary of non-volunteer head coaches and assistant coaches⁷¹

H. FERPA

An institution must distribute to all enrolled students a yearly notification of students' rights under the Family Educational Rights and Privacy Act (FERPA).⁷²

I. Drug Violations

An institution must provide a separate, clear, and conspicuous notice to each student, upon enrollment, that informs the student of the effect that a drug law conviction will have on their eligibility for federal grants, loans, or work-study assistance.⁷³ If a student loses federal aid eligibility due to a drug law

⁶⁵ 20 U.S.C. § 1092(a)(1)(Q).

⁶⁶ *Id.* § 1092(a)(1)(V).

⁶⁷ 34 C.F.R. §§ 668.41(g)(1), 668.47; *see also* 20 U.S.C. § 1092(g)(1), (3) (setting forth the same requirement).

⁶⁸ 20 U.S.C. § 1092(g)(3); 34 C.F.R. §§ 668.41(g)(1)(ii).

⁶⁹ *Id.* § 1092(g)(1); 34 C.F.R. § 668.47(c).

⁷⁰ 34 C.F.R. § 668.47(c)(2)(i).

⁷¹ *Id.* § 668.47(c)(9), (10) (giving more detailed information on calculating average salaries).

⁷² 20 U.S.C. § 1092(a)(1); 34 C.F.R. §§ 99.7(a), 668.41(c)(1).

⁷³ 20 U.S.C. §§ 1091(r)(1), 1092(k)(1).



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violation, the institution must provide timely written notice of the eligibility loss and explain ways the student can regain eligibility.⁷⁴

V. PENALTIES

If an eligible institution has misrepresented information regarding its educational program, financial charges, or employability of its graduates—in essence, if the institution has falsified the information that it needs to disclose—then the Department of Education may impose a fine of up to \$55,907 per violation.⁷⁵ The institution must have reasonable notice and an opportunity for a hearing before the fine is imposed.⁷⁶

VI. COMPLIANCE CALENDAR

Description of Information	Date for Disclosure/Notice
Annual Notice to Enrolled Students ⁷⁷	Unspecified, annually (notice)
FERPA Notice ⁷⁸	Unspecified, annually (notice)
Graduation / Transfer-Out Rates ⁷⁹	July 1, annually (disclose)
Campus Crime Statistics and Campus Security Report ⁸⁰	October 1, annually (notice)
Fire Safety Report ⁸¹	October 1, annually (notice)
Athletic Program Participation Rates and Financial Support Data ⁸²	October 15, annually (notice)

⁷⁴ 20 U.S.C. §§ 1091(r)(2), 1092(k)(2). Regaining eligibility requires completing a drug rehabilitation program, passing unannounced drug tests, and having the conviction reversed or set aside. *Id.* § 1092(k)(2).

⁷⁵ 20 U.S.C. § 1094(c)(3)(B) (referencing original penalty amount of \$25,000); *see* 34 C.F.R. § 36.2 (setting forth adjusted penalty amount, which took effect January 15, 2018).

⁷⁶ 20 U.S.C. § 1094(c)(3)(B)(i).

⁷⁷ *Id.* § 1092(a)(1); 34 C.F.R. § 668.41(c)(1).

⁷⁸ 20 U.S.C. § 1092(a)(1); 34 C.F.R. §§ 99.7(a), 668.41(c)(1).

⁷⁹ 20 U.S.C. § 1092(a)(3)(A), (e)(9); 34 C.F.R. §§ 668.45(a)(5), 668.48(a).

⁸⁰ 34 C.F.R. § 668.41(e)(1).

⁸¹ *Id.*

⁸² 34 C.F.R. § 668.41(g)(1).



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VII. STAYING UP-TO-DATE

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

DOCUMENT/REFERENCE	DESCRIPTION
Federal Student Aid Handbook (Appendix F)	Summarizes and describes institutional reporting and disclosure requirements in an alphabetical compliance calendar with due dates and references to legal provisions
Federal Student Aid Consumer Information	Website describes the requirements for consumer information that an institution of higher education must provide its students, the Department of Education, and others.
Consumer Information Disclosures at a Glance	Chart prepared by Federal Student Aid office that shows all information that an institution must disclose
NPEC Information Required to be Disclosed	Summarizes the information that is required to be disclosed under the Higher Education Act and offers suggestions on how to disseminate the information.