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File Date: 2/3/14

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Higher Education Commission
Division:	Division of Postsecondary School Authorization
Contact Person:	Julie M. Woodruff
Address:	Parkway Towers, Suite 1900, 404 James Robertson Parkway, Nashville, TN 37243-0830
Phone:	615-741-5293
Email:	julie.woodruff@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Julie M. Woodruff
Address:	Parkway Towers, Suite 1900, 404 James Robertson Parkway, Nashville, TN 37243-0830
Phone:	615-741-5293
Email:	julie.woodruff@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Tennessee Higher Education Commission		
Address 2:	Parkway Towers, 404 James Robertson Parkway, 18th Floor Boardroom		
City:	Nashville		
Zip:	37243-0830		
Hearing Date :	03/27/2014		
Hearing Time:	10:00 a.m.	X CST/CDT ___EST/EDT	

Additional Hearing Information:

Interested parties who wish to do so may submit written comments by March 27, 2014. All comments should be directed to: Tennessee Higher Education Commission, Attn: Julie M. Woodruff, Parkway Towers, Suite 1900, 404 James Robertson Parkway, Nashville, TN 37243-0830.

Revision Type (check all that apply):
X Amendment
X New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1540-01-02	Authorization and Regulation of Postsecondary Institutions and Their Agents

Rule Number	Rule Title
1540-01-02-.03	Definitions
1540-01-02-.05	Exemption
1540-01-02-.07	Institutional Applications
1540-01-02-.08	Regulations for Specific School Types
1540-01-02-.11	Institutional Catalog
1540-01-02-.13	Enrollment Agreements and Disclosure Standards
1540-01-02-.14	Financial Standards
1540-01-02-.16	Personnel and Instructor Qualifications
1540-01-02-.19	Fair Consumer Practices and Student Complaints
1540-01-02-.26	Return of Regulatory Fees

Amendments

Rule 1540-01-02-.03 Definitions paragraph (1) subparagraph (e) is amended by deleting the present language in its entirety and replacing it with the following:

(e) "Agent" means any person owning any interest in, employed by or representing for remuneration a postsecondary educational institution, who, by solicitation in any form, outside of the institution, enrolls or seeks to enroll a student for education offered by an authorized institution, or offers to award educational credentials, for remuneration, on behalf of any such institution for any such purpose.

Further, Rule 1540-01-02-.03 Definitions paragraph (1) subparagraph (p) is amended by deleting the present language in its entirety and replacing it with the following:

(p) "Credentials" means degrees, diplomas, certificates, transcripts, reports, documents, or letters of designation, marks, appellations, series of letters, numbers or words which signify, purport, or are generally taken to signify enrollment, attendance, progress or satisfactory completion of the requirements or prerequisites for education at a postsecondary educational institution.

Further, Rule 1540-01-02-.03 Definitions paragraph (1) subparagraph (ee) is amended by deleting the present language in its entirety and replacing it with the following:

(ee) "Postsecondary educational institution" includes, but is not limited to, an academic, vocational, technical, online/distance learning, business, professional, or other school, college, or university, or other organization or person, offering educational credentials, or offering instruction or educational services primarily to persons who have completed or terminated their secondary education or who are beyond the age of compulsory high school attendance, for attainment of educational, professional, or vocational objectives.

Authority: T.C.A. §§ 49-7-2003 and 49-7-2005.

Rule 1540-01-02-.05 Exemptions is amended by deleting the present language in its entirety and replacing it with the following:

(1) T.C.A. § 49-7-2004 includes general descriptions of institutions and programs that are exempt from the provisions of the Act and these rules. Institutions and programs meeting the specific provisions below shall be considered exempt pursuant to the general exemption descriptions of T.C.A. § 49-7-2004.

(a) Education, instruction or training that is:

1. maintained or given by an employer or group of employers, for employees or for persons they anticipate employing without charge, which shall include taking a payroll deduction or requiring a minimum length of employment, except that the employer/institution may accept funds provided through a state or federal program that provides adequate institutional and/or programmatic review as determined by the Commission staff; or

2. maintained or given by a U.S. Department of Labor or state recognized labor organization to its membership or apprentices or without charge, except that the institution may accept funds provided through a state or federal program that provides adequate institutional and/or programmatic review as determined by the Commission staff; or

3. financed and/or subsidized by public funds, without charge to the students, having a closed enrollment; or

4. given under a contract agreement, having a closed enrollment, at no cost to the student and does not offer educational credentials that in the opinion of the Commission are specifically directed toward new or additional vocational,

professional or academic goals.

(b) Programs, seminars or workshops that are recreational or avocational, including motivational or enrichment programs, as determined by the Commission staff shall be considered exempt from authorization requirements. Upon review by the Commission staff, a provider that presents the instruction in such a way as to suggest a vocational end may be required to become authorized, or clarify through public advertising that the program, seminar, or workshop is in fact recreational or avocational.

(c) Short-term programs, seminars or workshops that are solely for professional enhancement as determined by the Commission staff shall be considered exempt from authorization requirements. Education, training or instruction resulting in specialized certifications clearly used to denote technical, professional or vocational proficiency toward an additional vocational goal or new job title must be authorized for operation.

(d) Intensive review courses designed solely to prepare students for graduate or professional school entrance exams and professional licensure exams. The latter shall include, but not be limited to, intensive review courses for certified public accountancy tests, insurance or securities licensure/registration, the examination for professional practice in psychology, and the bar examination.

(e) Training designed to prepare students for credit-by-examination tests may be considered exempt from authorization requirements. The exemption is contingent on the entity's agreement to indicate in all promotional materials that the training is for test preparation for credit-by-examination tests and the entity refrains from any misleading representations. Such representations include:

1. suggesting that the training results in receipt of an educational credential, such as a degree;

2. listing anticipated salary amounts; and

3. suggesting that the entity is accredited.

(f) Eleemosynary institutions, including religious institutions, that:

1. offer instruction or training and do not offer degrees of any type;

2. do not suggest that postsecondary credit may be awarded by another party or transfer in educational credentials from another source; and

3. do not offer diplomas/certificates, including those that in the opinion of the Commission replicate letters of designation or degrees.

(g) Businesses offering limited computer training in hardware, software, delivery systems or any related technology for clients or customers directly related to a sale of equipment or services are exempt from the provisions of authorization.

(h) Businesses offering short-term computer training in common software or basic computer hardware that is intended for enrichment or professional enhancement are exempt from the provisions of authorization unless in the opinion of the Commission staff the courses using various software are offered concurrently toward a vocational goal.

(2) To operate within exemption status, the following guidelines shall be used:

(a) Institutions that clearly qualify as exempt under the Act and these regulations after Commission staff review shall be considered exempt from authorization without a vote of the Commission.

(b) Any institution or program exemption is subject to annual Commission staff review.

(c) Any institution or program exemption can be revoked or amended by the Commission staff at any time that the basis for the exemption changes or no longer exists.

(3) To request an exemption, institutions shall submit a descriptive narrative explaining how the institution and/or programs qualify for an exemption. The request shall include a citation to the exemption provision relied on in the Act and/or these rules and documentation supporting the requested exemption such as: copies of all institutional materials; brochures; advertising; state charter or business license; and organizational ties and/or contracts with other educational providers. Upon receipt of an exemption request, the Commission staff shall make a written determination and provide a date by which an aggrieved institution may submit a request for further review by the Executive Director. Such date shall not be earlier than ten (10) business days after the date of the letter.

(4) If the institution is aggrieved by a determination concerning exemption status, the institution may seek review as provided for in Rule 1540-01-02-.02(2)(b) and T.C.A. § 49-7-2010(b). Any request for review shall be in writing, signed, list each instance where the Commission staff erred, and provide a detailed explanation of each alleged error, including references to specific statutes or rules. Requests for review shall be received through hand delivery, mail, electronic mail or facsimile. A request may be denied if it is not received in a timely manner as set forth in paragraph (3).

Authority: T.C.A. §§ 49-7-2002, 49-7-2004, 49-7-2005, 49-7-2006 and 49-7-2008.

Rule 1540-01-02-.07 Institutional Application paragraphs (6), (7), (8), (9), and (10) are amended by deleting the present language in its entirety, replacing it with the following, and re-numbering all subsequent paragraphs accordingly:

(6) Bond Requirements for Institutions:

(a) Institutions must, on forms provided by the Commission, secure for student indemnification purposes, from an insurance company licensed in Tennessee, a continuous surety bond in the amount of:

1. ten thousand dollars ($10,000) for in-state institutions, out-of-state public institutions and all institutions providing primarily religious instruction, and

2. twenty thousand dollars ($20,000) for all other institutions, including out-of-state private institutions.

(b) Out-of-state institutions must, on forms provided by the Commission, secure a surety bond for agents in the amount of five thousand dollars ($5,000) per agent from a surety company authorized to do business in Tennessee with the institution as principal.

(c) Bonds provided by institutions must be site specific.

(d) An irrevocable letter of credit secured by a certificate of deposit or a cash deposit with a bank may be accepted in lieu of the bond pending approval of the Commission staff. Such deposits are subject to the same terms and conditions provided for in the surety bond requirement under this regulation.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006, 49-7-2007, 49-7-2008 and 49-7-2013.

Rule 1540-01-02-.08 Regulations For Specific School Types paragraph (3) subparagraph (a), paragraph (8), and paragraph (10) are amended by deleting the present language of this rule in its entirety and re-numbering and re-letting the remaining paragraphs and subparagraphs accordingly.

Authority: T.C.A. §§ 49-7-2003, 49-7-2005 and 49-7-2008.

Rule 1540-01-02-.11 Institutional Catalog paragraph (1) is amended by adding a new subparagraph, as written below, at the end of paragraph (1).

(r) the cash discount policy, if offered to students.

Authority: T.C.A. §§ 49-7-2002, 49-7-2005, 49-7-2006 and 49-7-2008.

Rule 1540-01-02-.13 Enrollment Agreements and Disclosure Standard paragraph (2) subparagraph (i) is amended by deleting the present language in its entirety and replacing it with the following and paragraph (2) is further amended by adding a new subparagraph, as written below, at the end of paragraph (2).

(i) knows of their rights in a grievance situation including contacting the Tennessee Higher Education Commission by including on the form a statement in the following format:

1. A statement: "I realize that any grievances not resolved on the institutional level may be forwarded to the Tennessee Higher Education Commission, (615) 741-5293."; and

(j) has received and understands the institution's cash discount policy (applicable only to those institutions that have a cash discount policy).

Further, Rule 1540-01-02-.13 Enrollment Agreements and Disclosure Standards paragraph (3) is amended by deleting the present language in its entirety, replacing it with the following:

(3) Also included in the enrollment contract or pre-enrollment checklist, shall be the most recent withdrawal, completion and in-field placement data as calculated by the Commission by including:

(a) The following statement: "For the program entitled, (program name), I have been informed that, for the July (year)/June (year) period, the withdrawal rate is (percent)%, the completion rate is (percent)%, and the in-field placement rate is (percent)%. Detailed statistical data for this program may be viewed by going to www.tn.gov/thec and clicking on the Authorized Institution Data button." or

(b) A copy of the report created for the institution by the Commission staff and a statement that "the report can be viewed by going to www.tn.gov/thec and clicking on the Authorized Institution Data button."

Authority: T.C.A. §§ 49-7-2005, 49-7-2006 and 49-7-2008.

Rule 1540-01-02-.14 Financial Standards paragraphs (6) and (7) are amended by deleting the present language in its entirety and replacing it with the following:

(6) All authorized institutions must file each year the most recent audited financial statement, certified by an independent certified public accountant for the most recent institutional fiscal year subject to the following:

(a) Institutions owned by the same parent company may submit an audited consolidated corporate financial statement. The staff, Committee, or Commission, however, may request additional campus or institution specific-information where needed to protect the public interest.

(b) The balance sheet must reflect owner's (proprietorship, partnership, corporation, or other) assets and liabilities.

(c) Related parties must be disclosed, including related party footnotes, debt agreements with owners, and supplemental footnotes on separate campuses or branches are expected.

(d) It should be noted whether or not tuition revenue is recognized up front or on a pro rata basis.

(e) Within three years from initial temporary authorization, neither the ratio of current fund revenues to current fund expenditures nor the ratio of current assets to liabilities, both site specific and corporate, where applicable, shall be less than 1:1, without convincing explanation.

(f) Institutions that have annual gross tuition revenue of one million dollars ($1,000,000) or less may request a waiver, by the established deadline, of the audit contemplated by this section and provide the most recent financial information in a format acceptable to the Commission staff.

(7) All institutions seeking authorization must maintain a business account with a financial institution that is federally insured in said institution's name.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006 and 49-7-2015.

Rule 1540-01-02-.16 Personnel and Instructor Qualifications paragraph (1) is amended by deleting the present language in its entirety and replacing it with the following language:

(1) Institutions must provide and maintain qualified faculty and staff in order to fulfill the mission of the institution and all obligations to the students. As further described below, personnel qualifications must be submitted to the Commission staff on a School Personnel Application no later than ten (10) days after the hire date.

(a) Unaccredited institutions must submit to the Commission staff School Personnel Applications for all instructors and administrative personnel as that term is defined in this rule.

(b) Institutions accredited by an accrediting body recognized by the U.S. Department of Education must submit to the Commission staff School Personnel Applications for all administrative personnel as that term is defined in this rule. For each instructor, an accredited institution shall maintain on-site documentation supporting instructors meeting the minimum qualifications and shall complete a School Personnel Application at any time upon request from the Commission staff.

Further, Rule 1540-01-02-.16 Personnel and Instructor Qualifications is amended by adding a new paragraph (2), as written below, and re-numbering all subsequent paragraphs accordingly:

(2) Administrative personnel and instructors shall meet all qualifications listed in this rule. Evidence of education, experience, or training (including official transcripts) for each personnel must be maintained on-site at the location. Institutions must submit a copy of this evidence at any time upon request from the Commission staff.

Further, Rule 1540-01-02-.16 Personnel and Instructor Qualifications paragraph (11) subparagraph (a) is amended by deleting the present language in its entirety and replacing it with the following language:

(a) Instructional staff for all institutions must be selected at a minimum on the basis of these rules.

Further, Rule 1540-01-02-.16 Personnel and Instructor Qualifications paragraph (11) subparagraph (d) is amended by deleting the present language in its entirety and replacing it with the following language:

(d) An instructor must be qualified by education and experience/background and must meet the following qualifications as minimum requirements:

Further, Rule 1540-01-02-.16 Personnel and Instructor Qualifications paragraph (11) subparagraph (d) parts 4 and 5 are amended by deleting the present language in its entirety and replacing it with the following language:

4. Minimum for an associate level:

(i) Meet the minimum requirements for doctorate, masters or baccalaureate level; or

(ii) Hold an associate degree from a postsecondary institution judged to be appropriate by the Commission and either:

(I) an associate degree with a concentration in the subject to be taught and (1) one year of practical experience; or

(II) an associate degree not in the subject area but with a minimum of two (2) years of practical experience within the last five (5) years in the subject area to be taught and satisfactory completion in a postsecondary educational institution of nine (9) semester hours or twelve (12) quarter credit hours in the subject area to be taught. Additional years of documented experience in the subject area may be substituted for semester / quarter hour requirements.

5. Minimum for diploma and certificate level:

(i) Meet the minimum requirements for doctorate, masters or baccalaureate or associate level; or

(ii) Hold a high school diploma or GED and a certificate of completion from a postsecondary institution judged to be appropriate by the Commission in a relevant subject area and a minimum of three (3) years of practical experience within the last seven (7) years in the subject area to be taught. Additional years of documented experience in the subject area may be substituted for the postsecondary educational requirements.

Further, Rule 1540-01-02-.16 Personnel and Instructor Qualifications paragraph (12) is amended by deleted the paragraph in its entirety and re-numbering all subsequent paragraphs accordingly.

Further, Rule 1540-01-02-.16 Personnel and Instructor Qualifications paragraph (13) is amended by deleting the present language in its entirety and replacing it with the following language:

(13) The Executive Director may approve a variance from the specific qualifications in paragraph (12) with sufficient justification and an assurance that the program quality will not be lessened. In such a situation the institutional director must submit written justification and documentation with the School Personnel Application submission. In addition the instructor must be institutionally evaluated at the close of the first instructional period for effectiveness and quality. This evaluation shall be made available to the Commission staff upon request.

Further, Rule 1540-01-02-.16 Personnel and Instructor Qualifications paragraph (15) subparagraphs (a) through (c) are amended by deleting the present language in its entirety and replacing it with the following language:

(a) Agents as defined by the Act and Rule 1540-01-02-.03 must submit an Agent Permit Application, as provided by the Commission staff and must receive approval and an agent permit from the Commission staff prior to any solicitation. The application must be accompanied by the following:

1. recommendations by two (2) reputable persons certifying that the applicant is of good character and reputation;

2. a check payable to the State Treasurer of Tennessee as required under these regulations;

3. a surety bond as specified in Rule 1540-01-02-.07; and

4. certification by the institutional director that the applicant will be directed to act in accordance with these regulations.

(b) Agent permits must be renewed every year. The expiration date of a permit is one (1)

year from the date of issue or termination of employment whichever occurs first.

(c) Agents must have separate permits to represent separate institutions unless the institutions have common ownership such that the institutions present a common name to the public and have the same mission. Mutual agreement by institutions is required.

Further, Rule 1540-01-02-.16 Personnel and Instructor Qualifications paragraph (15) subparagraph (g) is amended by deleting the present language in its entirety and replacing it with the following language:

(g) Any student solicited or enrolled by a non-licensed agent is entitled to a refund of all moneys paid and a release of all obligations by the institution. Any contract signed by a prospective student as a result of solicitation or enrollment by a non-licensed agent shall be null and void and unenforceable at the option of the student. In cases where the institution is willing to honor the contract and the student wishes the contract enforced, it can be. However, in cases where the contract has been fully executed between the institution and the student, the student would not be entitled to a refund solely because the student was solicited by a non-licensed agent.

Authority: T.C.A. §§ 49-7-2002, 49-7-2005, 49-7-2006, 49-7-2009 and 49-7-2011.

Rule 1540-01-02-.19 Fair Consumer Practices and Student Complaints is amended by adding two (2) new paragraphs as worded below to the end of the rule:

(5) Institutions may provide a discount for cash payments provided:

(a) the institution has a written policy in the catalog that includes the definition of cash and details the qualifications for receiving and the amount of a cash discount and

(b) the student verifies receipt and understanding of the policy in the pre-enrollment checklist.

(6) An institution may award a scholarship, tuition waiver or other award provided:

(a) the criteria for receiving the award are clearly defined in writing;

(b) the institution has a form and procedure to verify eligibility; and

(c) the amount of the award is a flat dollar amount or subject to calculation using a defined formula or scale.

Authority: T.C.A. §§ 49-7-2005, 49-7-2006, 49-7-2007, 49-7-2008 and 49-7-2013.

New Rule

Rule 1540-01-02-.26 Return of Regulatory Fees is added as written below as a new section at the end of Rule Chapter 1540-01-02.

(1) Following the year-end closing, the Commission shall return to authorized institutions as described herein any reserve balance as of the end of the fiscal year that is greater than two million dollars ($2,000,000).

(a) No moneys shall be returned if the amount due an institution is less than twenty-five dollars ($25.00).

(b) The percentage of the excess due an institution is calculated by determining the percentage of the total of all reauthorization fees paid by the institution during the fiscal year.

(c) Institutions that did not pay a reauthorization fee during the fiscal year shall not receive any share of the excess.

(d) Institutions that close or that have had their authorization to operate revoked prior to the end of the fiscal year shall forfeit any share of the excess.

(2) At the request of an institution a refund will be made as follows:

(a) If an institution withdraws a pending application within three (3) working days from receipt or prior to the start of Commission staff's review, then all fees assessed shall be refunded.

(b) If an institution withdraws a pending application more than three (3) working days from receipt and once Commission staff review begins, the Commission may retain fifty percent (50%) of the assessed fees.

(c) Once Commission staff's review of a pending application is complete or a site visit has been conducted, the Commission may retain one hundred percent (100%) of the assessed fees.

(d) Institutions that fail to complete the application process described in Rule 1540-01-02-.07(1)(b) shall forfeit all fees paid.

(e) Any other fee collected is nonrefundable once the Commission staff has performed the associated review or work related to that fee.

Authority: T.C.A. §§ 49-7-2005 and 49-7-2014.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: February 3, 2014

Signature:

Name of Officer: Dr. Richard G. Rhoda

Title of Officer: Executive Director

L.L. PERRIN
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF DAVIDSON

Subscribed and sworn to before me on: February 3, 2014

Notary Public Signature:

My commission expires on: November 6, 2017

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Tre Hargett
Secretary of State

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