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312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

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 Roberson Parkway, Nashville
Zip: 37243-0830
Phone: (615) 253-8857
Email: Julie.woodruff@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. 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

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

Amendments

Rule 1540-01-02-.03 Definitions paragraph (1) subparagraphs (e), (p), and (ee) are amended by deleting the present language in its entirety and replacing it with the following, so that subparagraphs (e), (p), and (ee) shall read:

- (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.
- (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.
- (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 Exemption is repealed by deleting the present language in its entirety and replacing it with the following, so that the new rule shall read:

- (1) T.C.A. § 49-7-2004 of the Act 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 (1) to its membership or apprentices; or (2) without charge, except that the department or organization 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 to refrain from any misleading representations. Such misleading 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 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) The following guidelines shall apply to determinations of exemption:
- (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 a determination of 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 Applications paragraphs (6), (7), (8), (9), and (10) are amended by deleting the present language in its entirety and replacing it with the following, so that, as amended, the rule shall read:

- (6) Bond Requirements:
- (a) Institutions must, on forms provided by the Commission, secure for student indemnification purposes, from a surety company qualified and authorized to do business 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 qualified and 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.

Subsequent paragraphs 11 through 14 are renumbered accordingly as 7 through 10.

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-lettering 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 subparagraph (r), so that, as amended, subparagraph (r) shall read:

- (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 by adding a new subparagraph (j), so that, as amended, paragraph (2) subparagraphs (i) and (j) shall read:

- (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, so that, as amended, paragraph (3) shall read:

- (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, 49-7-2008 and 49-7-2019.

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, so that, as amended, paragraphs (6) and (7) shall read:

- (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, so that, as amended, paragraph (1) shall read:

- (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 that demonstrates the minimum qualifications and must submit such documentation and 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), so that, as amended, paragraph (2) shall read:

- (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.

Subsequent paragraphs 2 through 11 are renumbered accordingly as 3 through 12.

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, so that, as amended, paragraph (11) subparagraph (a) shall read:

- (11) Instructors:
 - (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, so that, as amended,

paragraph (11) subparagraph (d) shall read:

- (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, so that, as amended, paragraph (11) subparagraph (d) parts 4 and 5 shall read:

- 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, 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.

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, so that, as amended, paragraph (13) shall read:

- (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, so that, as amended, paragraph (15) subparagraphs (a) through (c) shall read:

- (15) Agents:

- (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 immediately upon 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, so that, as amended, paragraph (15) subparagraph (g) shall read:

- (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 paragraphs (5) and (6), so that, as amended, paragraphs (5) and (6) shall read:

- (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 similar 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.

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

New Rule

Rule 1540-01-02-.26 Return of Regulatory Fees is added to Chapter 1540-01-02, so that the new rule shall read:

- (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 paid of the total reauthorization fees collected 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.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Mr. Charles W. Bone	X				
Mr. Randy Boyd	X				
Mr. Evan Cope, Vice-Chair	X				
Mr. Robert Fisher	Non-Voting Member	Non-Voting Member	Non-Voting Member		
Mr. Tre Hargett				X	
Ms. Sharon L. Hayes	X				
Mr. Adam Jarvis	X				
Mr. Cato Johnson, Chair	X				
Ms. Pam Koban	X				
Mr. Jon Kinsey, Vice-Chair				X	
Mr. David H. Lillard, Jr.				X	
Dr. Gary Nixon	Non-Voting Member	Non-Voting Member	Non-Voting Member		
Mr. AC Wharton, Jr.				X	
Mr. Justin P. Wilson				X	
Mr. Keith Wilson	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Higher Education Commission on 04/24/2014, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/03/2014

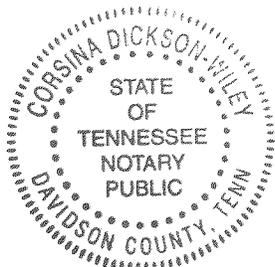
Rulemaking Hearing(s) Conducted on: (add more dates). 03/27/2014

Date: 08/11/2014

Signature: *Richard G. Rhoda*

Name of Officer: Dr. Richard G. Rhoda

Title of Officer: Executive Director



My Commission Expires AUG. 23, 2016

Subscribed and sworn to before me on: 08-11-2014

Notary Public Signature: *Corsina Dickson-Wiley*

My commission expires on: 08-23-2016

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

8-26-14

Date

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Effective on: 12-1-2014

Tre Hargett

Tre Hargett
Secretary of State

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Public Hearing Comments

Rules of Interest - Definition of Accreditation, College and University and Institution Names

- 1540-01-02-.03 – Definitions
- 1540-01-02-.06(14) – Minimum Authorization Standards and Requirements

Comment Summary

The January 30, 2014 proposed revisions to Rule Chapter 1540-01-02 did not include certain changes that were in the December 6, 2013 draft language. The commenters refer to the proposed definition of accreditation, college and university in .03 and language revising .06(14) concerning institution names.

Commenting Entities

- Tennessee Association of Independent Colleges & Schools
- National College of Business & Technology (Nashville, Madison, Bristol, Knoxville, Bartlett and Memphis)
- Daymar Colleges Group (Clarksville, Nashville and Murfreesboro)
- Virginia College School of Business and Health (Chattanooga)
- Southeastern Institute (Nashville)
- Remington College (Nashville and Memphis, Tennessee and Heathrow, Florida)
- North Central Institute (Clarksville) (as to definition of accreditation)

Commission Staff Response

DPSA includes this comment for purposes of the rulemaking record; however, the subject of the comment is outside the scope of this rulemaking. Pursuant to T.C.A. § 4-5-203(c)(2)(B), an agency may make changes to a rule after the rulemaking hearing as long as the changes are within the scope of the rulemaking notice. In this instance, the institution name rule at .06(14) and the definitions of accreditation, college and university in .03 are not addressed in the Notice of Rulemaking Hearing. Therefore, if the Commission were to adopt revisions to these rules, it would be acting outside the scope of the notice and violating T.C.A. § 4-5-203(c)(2)(B).

For purposes of background, DPSA notes that on December 6, 2013, DPSA sent authorized institutions draft rule revision language via email and encouraged institutions to review the language and submit comments. On January 16, 2014, the Committee of Postsecondary Educational Institutions considered a set of rule revisions drafted by DPSA. The revisions were drafted after considering the December 6, 2013 draft language, filed comments, and legislative activity. Thereafter, on January 30, 2014, the Commission approved the proposed revisions for purposes of filing a Notice of Rulemaking Hearing and conducting a hearing as soon as possible.

DPSA notes that proposed legislation regarding an institution's name was introduced in the 108th General Assembly. In the first session, SB0546/HB969 did not pass. In the second session, SB1963 regarding an institution's name was filed on January 22, 2014, and HB2162 was filed on January 28, 2014. As of April 15, 2014, the legislation passed out of the Senate and the House of Representatives.

Rules of Interest – Definition of Agent and Agent Permitting

- Rule 1540-01-02-.03(1)(e) – Definitions
- 1540-01-02-.16(15) – Personnel and Instructor Qualifications

Comment Summary

Clarification is needed as to whether “an individual that is distributing general institution information or program information without the offer of enrollment or use of enrollment forms, whether theirs or forms from the State, would this person not be considered an agent and, therefore, would not need an agent fee?”

Commenting Entities

- Tennessee Association of Independent Colleges & Schools

- National College of Business & Technology (Nashville and Madison)
- Daymar Colleges Group (Clarksville, Nashville and Murfreesboro)
- Virginia College School of Business and Health (Chattanooga)
- Southeastern Institute (Nashville)
- Remington College (Nashville and Memphis, Tennessee and Heathrow, Florida)

Commission Staff Response

Distributing general institution or program information constitutes solicitation under the definition of agent and the person will have to obtain an agent permit if he or she otherwise meets the definition of agent.

Rule of Interest – Definition of Agent

Rule 1540-01-02-.03(1)(e) – Definitions

Comment Summary

The definition of agent should remain unaltered. As the definition currently reads, a person who hands out information about educational opportunities in the area is not required to obtain an agent permit when the person has other primary job duties. Handing out such information creates good will within the community.

Commenting Entities

North Central Institute (Clarksville)

Commission Staff Response

DPSA disagrees that the current definition does not require an agent permit as described in the comment. Additionally, the proposed definition is preferable as it better reflects the statutory definition found at T.C.A. § 49-7-2003(1).

Rule of Interest – Degree Designations

Rule 1540-01-02-.08(3)(b) – Regulation for Specific School Types

Comment Summary

The rules do not go far enough to address the issue of degree designation.

Commenting Entities

- Tennessee Association of Independent Colleges & Schools
- National College of Business & Technology (Nashville, Madison, Bristol, Knoxville, Bartlett and Memphis)
- Daymar Colleges Group (Clarksville, Nashville and Murfreesboro)
- Virginia College School of Business and Health (Chattanooga)
- Southeastern Institute (Nashville)
- Remington College (Nashville and Memphis, Tennessee and Heathrow, Florida)

Commission Staff Response

DPSA includes this comment for purposes of the rulemaking record; however, the subject of the comment is outside the scope of this rulemaking. Pursuant to T.C.A. § 4-5-203(c)(2)(B), an agency may make changes to a rule after the rulemaking hearing as long as the changes are within the scope of the rulemaking notice. In this instance, the degree designation paragraph, 1540-01-02-.08(3)(b) is not addressed in the Notice of Rulemaking Hearing. Therefore, if the Commission were to adopt revisions to this rule, it would be acting outside the scope of the notice and violating T.C.A. § 4-5-203(c)(2)(B).

Additionally, DPSA notes that proposed legislation regarding degree designations was introduced in the 108th General Assembly. Members introduced SB1170/HB1091 in the first session; however, the legislation did not pass. On March 19, 2014, the Senate bill came up in the second session and the Senate Education Committee assigned the bill to general sub.

Rule of Interest - Disclosure of Completion, Retention, and Placement Rates

1540-01-02-.13(3)(a) – Enrollment Agreements and Disclosure Standards

Comment Summary

This rule requires only institutions in this sector to disclose completion, retention, and placement rates to potential students in the enrollment agreement. State institutions and some private institutions do not have similar disclosure requirements. If the purpose of the rule is to provide consumer protection, the rule should be applied to all potential students of all institutions or none at all.

Commenting Entities

University of Phoenix (Cordova, Chattanooga, Clarksville, Knoxville, Murfreesboro, and Nashville, Tennessee and Phoenix, Arizona)

Commission Staff Response

DPSA notes that the Commission's authority to promulgate rules pursuant to T.C.A. § 49-7-2005(a)(6) applies to title 49, chapter 7, part 20. This part does not apply to institutions exempt pursuant to T.C.A. § 49-7-2004, which includes public institutions and some private institutions. This rulemaking is conducted pursuant to the rulemaking authority granted in T.C.A. § 49-7-2005(a)(6); therefore, the rules presented do not include exempt institutions.

Additionally, the Commission has the authority to require the disclosures by authorized institutions. Chapter 1540-01-02 has required that institutions disclose withdrawal, completion, and placement information since March 1993. T.C.A. § 49-7-2006(a)(1)(D) permits THEC to specify disclosures required to be given to prospective students along with a catalog or brochure prior to enrollment. T.C.A. § 49-7-2008(f)(3) allows THEC to require that institutions publish placements rates and employment and earnings information. Also, pursuant to T.C.A. § 49-7-2019: "Information related to graduation, job placement and tuition costs required to be provided to the commission shall also be provided in writing to a prospective student for the specific field of study in which the student is considering enrolling." DPSA notes that the latter statutory reference was not included in the Notice of Rulemaking Hearing authority, but has been added.

Rule of Interest – In-Field Placement Services

1540-01-02-.13(4) – Enrollment Agreements and Disclosure Standards

Comment Summary

Language should be added to 1540-01-02-.13(4) such that institutions that "do not have in-field placement services" may receive a waiver of 1540-01-02-.13(3).

Commenting Entities

Bridgepoint Education (Ashford University and University of the Rockies)

Commission Staff Response

DPSA includes this comment for purposes of the rulemaking record; however, the subject of the comment is outside the scope of this rulemaking. Pursuant to T.C.A. § 4-5-203(c)(2)(B), an agency may make changes to a rule after the rulemaking hearing as long as the changes are within the scope of the rulemaking notice. In this instance, Rule 1540-01-02-.13(4) was not addressed in the Notice of Rulemaking Hearing. Therefore, if the Commission were to adopt revisions to this rule, it would be acting outside the scope of the notice and violating T.C.A. § 4-5-203(c)(2)(B).

Rule of Interest – Filing of School Personnel Applications

1540-01-02-.16(1) – Personnel and Instructor Qualifications

Comment Summary

The due date should be changed to 20 calendar days from the start date rather than 10 days from the hire date.

Commenting Entities

Bridgepoint Education (Ashford University and University of the Rockies)

Commission Staff Response

DPSA does not recommend adoption of this comment. DPSA contends that obtaining the information as soon as possible after the hire date allows DPSA to review the information and notify the institution of any problems prior to a new hire beginning work or continuing in the position for very long. DPSA notes that it is in the best interest of the institution and the new employee to submit the necessary documentation as soon as possible to avoid problems in the event the employee does not meet THEC's minimum qualifications.

Rule of Interest – Definition of Administrative Personnel

1540-01-02-.16(1)(b) and (3) – Personnel and Instructor Qualifications

Comment Summary

The reference to "administrative personnel" in .16(1)(b) and (3) should include the term "senior."

Commenting Entities

Bridgepoint Education (Ashford University and University of the Rockies)

Commission Staff Response

DPSA includes this comment for purposes of the rulemaking record; however, the subject of the comment is outside the scope of this rulemaking. Pursuant to T.C.A. § 4-5-203(c)(2)(B), an agency may make changes to a rule after the rulemaking hearing as long as the changes are within the scope of the rulemaking notice. Although Rule 1540-01-02-.16(1)(b) is included in the Notice of Rulemaking Hearing, other rules defining and using the term "administrative personnel" are not in the notice. Specifically, Rule 1540-01-02-.16(3) and (4) are not addressed in the notice. Therefore, DPSA is not recommending adoption of this comment at this time. Additionally, DPSA believes the definition is clear and the term "administrative personnel" best suits the needs of a variety of entities and organizational structures.

Rules of Interest - Personnel and Instructor Qualifications

- 1540-01-02-.16(2) – Personnel and Instructor Qualifications (to be renumbered .16(3))
- 1540-01-02-.16(11)(b) &(c) – Personnel and Instructor Qualifications (to be renumbered .16(12)(b)&(c))

Comment Summary

The January 30, 2014 proposed revisions to Rule Chapter 1540-01-02 did not include certain changes that were in the December 6, 2013 draft language. The commenters refer to .16(2) and (11)(b) and (c) concerning instructor qualifications.

Commenting Entities

- Tennessee Association of Independent Colleges & Schools
- National College of Business & Technology (Nashville and Madison)
- Daymar Colleges Group (Clarksville, Nashville and Murfreesboro)
- Virginia College School of Business and Health (Chattanooga)
- Southeastern Institute (Nashville)
- Remington College (Nashville and Memphis, Tennessee and Heathrow, Florida)

Commission Staff Response

DPSA includes this comment for purposes of the rulemaking record; however, the subject of the comment is outside the scope of this rulemaking. Pursuant to T.C.A. § 4-5-203(c)(2)(B), an agency may make changes to a rule after the rulemaking hearing as long as the changes are within the scope of the rulemaking notice. In this instance, .16(2) and (11)(b) and (c) are not addressed in the Notice of Rulemaking Hearing. Therefore, if the Commission were to adopt revisions to these rules, it would be acting outside the scope of the notice and violating T.C.A. § 4-5-203(c)(2)(B).

As to 1540-01-02-.16(2) and (11)(b) and (c), DPSA notes that it is intended that the paragraphs and subparagraphs as currently worded will remain in the rules. The only language revision proposed in

the December 6, 2013 draft language sent to institutions was a typographical correction to .16(11)(b) that did not affect the meaning of the subparagraph. While this correction could have been included in the Notice of Rulemaking Hearing, it was not, and given such, it would be outside the scope of the rulemaking to include the revision at this time. DPSA will investigate whether the typographical correction can be made outside the rulemaking process of the Uniform Administrative Procedures Act.

Rule of Interest – Cash Discounts

Rule 1540-01-02-.19(5) – Fair Consumer Practices and Student Complaints (New Paragraph)

Comment Summary

The commenters support the addition of rule language concerning cash discounts.

Commenting Entities

- Tennessee Association of Independent Colleges & Schools
- National College of Business & Technology (Nashville, Madison, Bristol, Knoxville, Bartlett and Memphis)
- Daymar Colleges Group (Clarksville, Nashville and Murfreesboro)
- Virginia College School of Business and Health (Chattanooga)
- Southeastern Institute (Nashville)
- Remington College (Nashville and Memphis, Tennessee and Heathrow, Florida)

Commission Staff Response

No response is necessary.

Rule of Interest – Cash Discounts

Rule 1540-01-02-.19(5) – Fair Consumer Practices and Student Complaints (New Paragraph)

Comment Summary

1. The Commission should clarify the phrase "discount for cash payment" and whether "tuition grants" are "discounts for cash payment." The phrase should mean "a lower tuition charge in exchange for a student paying the institution directly in advance using a credit card or other direct payment method that is not federal financial aid."
2. Clarification is needed to ensure that the rule paragraph does not include awards that are given to individual students on a case-by-case basis, including awards for corrections, customer service credits, and operational error corrections. The speaker proposes the following language be added: "For purposes of Section 6, a scholarship, tuition waiver, or other award does not include internal adjustments, including but not limited to, awards for corrections, customer service credits, and revisions for operational error."

Commenting Entities

Bridgepoint Education (Ashford University and University of the Rockies)

Commission Staff Response

1. DPSA adopts the comment, in part. First, DPSA provides clarification herein by noting that "tuition grants" would be included in new paragraph (6) of Rule 1540-01-02-.19 and by adding the word "similar" to .19(6) such that the language reads: "An institution may award a scholarship, tuition waiver, or other similar award provided:" Second, DPSA opines that allowing an institution to define cash payment provides institutions greater flexibility and control.
2. DPSA does not adopt this comment at this time as the qualifying language in (6)(a)-(c) adequately limits the types of waivers or awards that are acceptable. Elsewhere, the rules support that an institution correctly bill a student and, in the event that billing is erroneous, post necessary corrections to the student's account.

Rule of Interest - Return of Regulatory Fees

Rule 1540-01-02-.26 – Return of Regulatory Fees (New Rule)

Comment Summary

When refunds are issued based on a percentage of the total of all reauthorization fees paid by an institution, small schools are going to be under-refunded.

Commenting Entities

West Tennessee Business College

Commission Staff Response

According to the language of .26, an institution will receive a percentage of the refund amount that is equal to the percentage paid of the total reauthorization fees collected. Under this methodology, the percentage of the refund to the reauthorization fee paid will be the same for all institutions. Thus, no institution will be under-refunded.

Rule of Interest - Return of Regulatory Fees

Rule 1540-01-02-.26 – Return of Regulatory Fees (New Rule)

Comment Summary

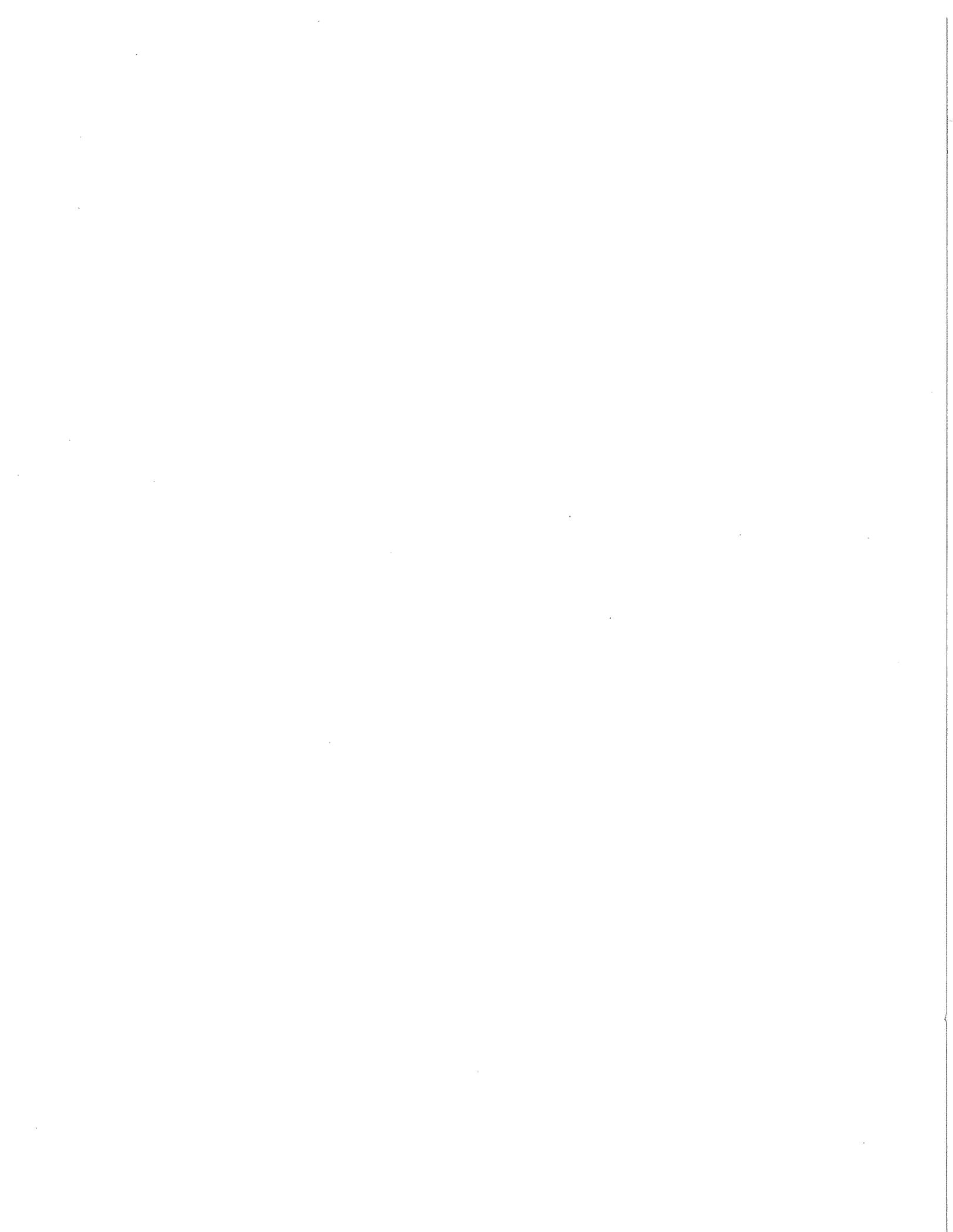
The commenters support the addition of rule language concerning a return of regulatory fees.

Commenting Entities

- Tennessee Association of Independent Colleges & Schools
- National College of Business & Technology (Nashville, Madison, Bristol, Knoxville, Bartlett and Memphis)
- Daymar Colleges Group (Clarksville, Nashville and Murfreesboro)
- Virginia College School of Business and Health (Chattanooga)
- Southeastern Institute (Nashville)
- Remington College (Nashville and Memphis, Tennessee and Heathrow, Florida)

Commission Staff Response

No response is necessary



Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule:

The Tennessee Higher Education Commission (THEC) represents that the businesses affected by these rule revisions are non-exempt postsecondary educational institutions. THEC opines that approximately 98 or 52% of the non-exempt postsecondary educational institutions may be small businesses.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

THEC represents that the additional reporting, recordkeeping and other administrative costs required for compliance with the proposed rule revisions is minimal. Similarly, the rule revisions do not require small business institutions to procure any professional skills that the institution would not already need to comply with the current rules.

(3) A statement of the probable effect on impacted small businesses and consumers:

THEC represents the following:

- The adoption of new rule .26 titled "Return of Regulatory Fees," may result in a refund to small businesses and such refund may be passed down, in whole or in part, to the students through lower fees or tuition.
- The revisions to rules .11 and .13 are applicable only when an institution elects to adopt a cash discount policy as provided for in the revision to rule .19. Using a cash discount may in fact benefit institutions and students by providing the institution a more certain form of payment and the student lower tuition costs.
- The revision to rule .14 should benefit small business institutions by alleviating the financial burden of submitting audited financial statements.
- The revision to rule .19(6) should benefit small business institutions by providing clarity as to when an institution may offer scholarships, tuition waivers or similar awards. Being able to offer such awards may aid the recruitment efforts of small business institutions.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business:

THEC represents that this is not applicable because the proposed rule revisions are not burdensome, intrusive or costly.

(5) A comparison of the proposed rule with any federal or state counterparts:

THEC represents that there are no federal or state counterparts to the proposed rule revisions.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule:

THEC represents that this question is not applicable because the proposed rule revisions are not burdensome, intrusive or costly. Moreover, exemption from the rules noted in response to number (3) would operate to deny small businesses the benefit of the refund, the waiver of the audit requirement, and the use of cash discounts and tuition awards.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

THEC represents that the proposed rule revisions will not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

1540-01-02-.03	<p>Definitions:</p> <ul style="list-style-type: none"> ▪ Generally, the revisions to .03 are intended to improve internal consistency as well as consistency between the rules and the Postsecondary Education Authorization Act of 1974, T.C.A. §§ 49-7-2001-2020 ("the Act"). ▪ Revisions also incorporate changes made during the 2008 rulemaking process. In October 2011, the Davidson County Chancery Court declared the 2008 rulemaking revisions void and of no effect as a result of a procedural error.
1540-01-02-.05	<p>Exemption:</p> <ul style="list-style-type: none"> ▪ The revision to .05(1) clarifies that the exemption authority is located in T.C.A. § 49-7-2004. ▪ The revisions to .05(1)(a)1. and 2. address situations where there is no charge directly to the student, but the institution does receive funds on behalf of the student through a program as described in the revision. It has become apparent to THEC that the current rule restricts the allocation of federal funds to certain educational providers and that this was not the intent of the rule. Thus, the revision is made to avoid an unintended consequence of the current wording of the rule ▪ The revisions to .05(1)(a)4. Improves understanding. ▪ The addition of .05(1)(b) and (c) and the deletion of current .08(10) place all exemptions under .05 and clarify the grounds under which short term programs, seminars, workshops, and professional enhancement may be exempt. This revision should make the rules more user-friendly and improve understanding. ▪ The addition of .05(1)(d) and (f) reintroduce exemptions into the rules that were removed from the rules as a result of the determination of the Davidson County Chancery Court in October 2011 that the 2008 rulemaking revisions were void and of no effect as a result of a procedural error. The language in .05(1)(d) is similar to language that appeared in the 1998 version of the rules, which appears to have been deleted in error. ▪ The addition of .05(1)(e) exempts a type of exam preparation not contained in .05(1)(d). This exemption is listed separately because the nature of the training requires that explicit provisions be included to address promotion and advertising. ▪ The additions of .05(1)(g) and (h) and the deletion of current .08(8) place all exemptions under .05. This revision should make the rules more user-friendly and improve understanding. ▪ The revisions to .05(2)-(4) clarify that an institution may request a determination of exemption for either programs or the institution as a whole. The revisions also remove the language that limits the term of the exemption status. This allows THEC to award exemptions for an unlimited amount of time while preserving the ability to revoke or amend an exemption. These revisions benefit institutions by simplifying the exemption review process and better describing the procedure for receiving a determination of exemption.
1540-01-02-.07	<p>Institutional Applications:</p> <ul style="list-style-type: none"> ▪ The revisions to .07(6)-(10) make the rule consistent with T.C.A. § 49-7-2013, corrects internal cross references, and places all bond requirements under one paragraph.
1540-01-02-.08	<p>Regulations for Specific School Types:</p> <ul style="list-style-type: none"> ▪ The deletion of .08(3)(a) removes redundancy in the rules as rule .02(4)(e) allows Commission Staff to establish application deadlines. ▪ THEC is deleting current .08(8) and (10), but is providing for the exemptions in .05. This modification serves to place all exemptions under .05. This revision should make the rules more user-friendly.
1540-01-02-.11	<p>Institutional Catalog:</p> <ul style="list-style-type: none"> ▪ THEC added .11(1)(r) as a result of the revision made to .19 concerning cash discounts. This revision seeks to ensure that all students receive the institution's

	cash discount policy and protects an institution in the event of a complaint.
1540-01-02-.13	<p>Enrollment Agreements and Disclosure Standards:</p> <ul style="list-style-type: none"> ▪ The addition of .13(2)(j) was made as a result of adding language to .19 allowing institutions to offer cash discounts. This revision seeks to ensure that all students are made aware that the institution has a cash discount policy and protects an institution in the event of a complaint. ▪ The revision to .13(3) is due to a waiver made by Dr. Richard Rhoda on April 29, 2010. At that time, it was determined that it was necessary to waive the rule provisions that require that certain language concerning placement, completion and withdrawal data appear in the enrollment agreement because the language contained in the rule had become obsolete and potentially misleading as a result of the passage of and subsequent implementation of 2008 Public Chapter 1103 (codified at Tenn. Code Ann. § 49-7-2019). The revision will benefit students and institutions by making sure students receive clear and recent statistical data.
1540-01-02-.14	<p>Financial Standards:</p> <ul style="list-style-type: none"> ▪ The revision to .14(6) is due to a waiver made by Dr. Richard Rhoda on April 29, 2010. At that time, it was determined that certified public accountants are not performing audits on smaller companies and that the cost of audits is prohibitive to smaller institutions. ▪ The revision to .14(7) is made to ensure that institution monies are not comingled with personal monies.
1540-01-02-.16	<p>Personnel and Instructor Qualifications:</p> <ul style="list-style-type: none"> ▪ The revisions to .16(1), (2), and (11)(a) and (d) put into the rule the policy of the Commission regarding the institution staff requiring the filing of a School Personnel Application, state that qualifications must be met, and explain the institution's evidentiary burden. These revisions also result in the deletion of current paragraph (12). The ten (10) day filing date allows THEC to obtain personnel qualification information following an individual hire date such that THEC can review the information and notify the institution of any problems prior to the new hire beginning work or continuing in the position for very long. The ten (10) day filing date was in the 2008 and 2009 versions of the rules but was removed as a result of the October 2011 Davidson County Chancery Court declaration that the 2008 rulemaking revisions were void and of no effect as a result of a procedural error. ▪ The language of current rule .16(11)(d)4. and 5. can be read such that an instructor with a bachelor's degree may not be qualified to teach an associate, diploma, or certificate level program. THEC opines that this was not the intent of the rule. Therefore, THEC has revised the rule so that an instructor will be qualified to teach all program levels beneath the highest level for which the instructor is qualified. This revision benefits institutions by simplifying the qualification requirements. ▪ The revisions to .16(13) are necessitated by other changes to the rule. ▪ The revisions to .16(15) generally clarify the language of the rule. The revision of paragraph (c) is intended to provide guidance as to the term "common ownership."
1540-01-02-.19	<p>Fair Consumer Practices and Student Complaints:</p> <ul style="list-style-type: none"> ▪ The addition of .19(5) and (6) allows institutions to provide cash discounts to students under certain circumstances and allows institutions to issue monetary awards, such as scholarships, under certain circumstances. Neither provision requires pre-approval by THEC, but institutions are required to provide any necessary documentation if asked by THEC to establish compliance. THEC proposes this revision in recognition of the fact that under certain circumstances cash discounts and monetary awards are appropriate. This revision, which was requested by institutions, will benefit institutions by allowing students to use cash payments, but it will also protect students by requiring that all students be made aware of the policy.
1540-01-02-.26	<p>Return of Regulatory Fees:</p> <ul style="list-style-type: none"> ▪ The addition of paragraph (1) is a result of discussions during the 2009 rulemaking proceeding. At that time, institutions were concerned that the fee increase was excessive. In response, THEC crafted this rule to ensure that it collects no more than is necessary to cover the costs in the annual budget and to maintain a reasonable surplus. This will benefit institutions by ensuring that excess collections will be returned to the institutions as described in the rule.

- Paragraph (2) provides a mechanism by which an institution can request a refund of all, or a portion, of fees paid if it decides to withdraw a pending application. This will benefit institutions by allowing THEC to return a portion of the fees depending on how much staff review has occurred at the time of withdrawal. This rule is similar to language that was removed from the 2000 rules as a result of the republication of the rules following the Davidson County Chancery Court's determination in October 2011 that the 2008 rulemaking revisions were void and of no effect as a result of a procedural error.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

In proposing these rule revisions, THEC relies on its authority under state law. Specifically, T.C.A. § 49-7-2005(a)(6) states that THEC has the power and duty to: "Promulgate rules, regulations, performance standards and procedures necessary or appropriate for the conduct of its work and the implementation of this part, which rules and regulations shall have the force of law, and to hold hearings as it deems advisable or as required by law in developing the rules, regulations and procedures or in aid of any investigation or inquiry." Further, as specifically relates to new rule .26, "Return of Regulatory Fees," THEC notes that T.C.A. § 49-7-2014(a) states: "The commission is authorized to set fees annually based on the intent to collect revenues sufficient to cover the costs of this regulatory function, including, but not limited to, travel, employee costs, legal costs and expert fees."

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Non-exempt postsecondary educational institutions are most directly affected by these rule revisions. As of April 1, 2014, THEC authorized 188 institutions with 391 locations. During the rulemaking process, THEC notified institutions of the proposed revisions and provided the institutions with an opportunity to submit written comments or appear at the rulemaking hearing. A detailed summary of all comments received is included with the Secretary of State filing. A general summary is as follows:

- Commenters requested clarification of the proposed revisions to Rules 1540-01-02-.03(1)(e) and .19(5).
- In several instances, the commenters advocated changes to rule language that was not included in the Notice of Rulemaking Hearing and, therefore, is not within the scope of this rulemaking.
- As to rule 1540-01-02-.03(1)(e), one institution argued that the definition of agent should remain unaltered.
- As to rule 1540-01-02-.13(3)(a), Enrollment Agreements and Disclosure Standards, one institution with seven authorized locations contended that the disclosure requirements should apply to all higher education institutions in Tennessee, whether exempt or non-exempt.
- As to rule 1540-01-02-.16(1), the corporate parent of two authorized institutions commented that the due date for the filing of School Personnel Applications should be changed from ten days from the hire date to twenty calendar days from the start date.
- As to rule 1540-01-02-.19(5), Fair Consumer Practices and Student Complaints, one entity and five institutions with fourteen locations urged adoption of the rule.
- As to rule 1540-01-02-.26, Return of Regulatory Fees, one entity and five institutions with fourteen locations urged adoption of the rule; however, one institution argued that the calculation will result in under refunding small institutions.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

THEC represents that there is an order of the Davidson County Chancery Court that is related to the proposed rule revisions in .03, .05, .16 and .26. On October 17, 2011, Chancellor Lyle of the Davidson County Chancery Court issued her opinion on the Petition for Declaratory Judgment filed by National College of Business and Technology and Remington College in September 2008. Chancellor Lyle determined that THEC failed to comply with the Uniform Administrative Procedures Act during a rulemaking that concluded in 2008 and determined that the resulting rules were void and of no effect. As a result, the Secretary of State requested an opinion from the Attorney General. Thereafter, the Attorney General issued Opinion No. 11-78 and the Secretary of State published Rule Chapter 1540-01-02 in November 2011. With the exception of Rule 1540-01-02-.25, which was revised in 2009, the November 2011 rules are identical to the June 2000 rules.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

THEC represents that there will be no increase or decrease in state or local government revenues, but that the implementation of the new rule "Return of Regulatory Fees" will require minimal expenditures and that the operation of this rule will result in a reduction of fee revenue equal to the amount in excess of any reserve balance as of the end of the fiscal year that is greater than two million dollars.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Dr. Stephanie Bellard Chase, Associate Executive Director, Division of Postsecondary School Authorization
Julie Woodruff, Assistant Executive Director & Lead Attorney, Division of Postsecondary School Authorization

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Dr. Stephanie Bellard Chase, Associate Executive Director, Division of Postsecondary School Authorization
Julie Woodruff, Assistant Executive Director & Lead Attorney, Division of Postsecondary School Authorization
Scott Sloan, General Counsel and Associate Executive Director for Legal & Regulatory Affairs

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Dr. Stephanie Bellard Chase, Associate Executive Director, Division of Postsecondary School Authorization
(615) 532-7495; stephanie.bellard@tn.gov
Julie Woodruff, Assistant Executive Director & Lead Attorney, Division of Postsecondary School Authorization
(615) 253-8857; julie.woodruff@tn.gov
Scott Sloan, General Counsel and Associate Executive Director for Legal & Regulatory Affairs
(615) 741-7571; scott.sloan@tn.gov

All persons are located at:
Tennessee Higher Education Commission
Parkway Towers, Suite 1900
404 James Robertson Parkway
Nashville, TN 37243-0830

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Additional information available upon request.

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

1540-01-02-.03 Definitions.

- (1) The following definitions are complementary to definitions in T.C.A. § 49-7-2003 and have the following meanings, unless the context clearly indicates otherwise:
- (a) "Ability-to-benefit" as used in these regulations, in contrast to the use of that term for federal financial aid or other purposes, means students, regardless of financial condition, who do not possess a high school diploma or GED, but who have demonstrated that they can profit materially or personally from a certain course of study.
 - (b) "Academic" in description of a program or institution means that which is organized primarily for academic training or transfer.
 - (c) "Act" means the Postsecondary Education Authorization Act of 1974, Tennessee Code Annotated §§ 49-7-2001, et seq. as amended.
 - (d) "Adverse action" means action taken by the Executive Director or Commission to penalize, limit, change, suspend or cause to cease activity that is in non-compliance with the Act and these rules. Such adverse action may include but not be limited to fines of \$500 per violation per day; suspension of activity; conditional authorization or revocation.
 - (e) "~~Agent~~" ~~means a person employed full or part time by the institution, whether the institution is located within or without the state of Tennessee, to act as representative, solicitor, broker, or independent contractor to directly procure or induce people to become students or enrollees for the institution at an off-campus location~~ 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.
 - (f) "Associate degree" means a credential issued to students who complete a vocational or academic program or curriculum consisting of at least 60 semester credit hours or 90 quarter credit hours of instruction, or equivalent.
 - (g) "Authorization to operate" means permission or licensure to operate for a specified time in a specified place(s). An institution or agent awarded a letter or certificate of authorization in Tennessee shall not use terms to interpret the letter or certificate which specify or connote greater approval than simple permission to operate. Terms which may not be used include, but are not limited to, "accredited," "supervised," "endorsed," and "recommended by the Commission."
 - (h) "Authorization site visit" means an institutional site visit conducted by Commission staff or Postsecondary Committee members to verify compliance with Postsecondary Education Authorization Act of 1974, Tennessee Code Annotated §§ 49-7-2001, et seq. as amended and the chapter 1540-01-02 of the Postsecondary Regulations. The authorization visit is commonly called a 'site visit'.
 - (i) "Bachelor's degree" means a credential issued to students who complete a vocational or academic program or curriculum consisting of at least 120 semester credit hours or 180 quarter hours, or equivalent.

- (j) "Certificate program" generally means one or more technical courses usually completed in one to twenty-six weeks, or up to and including 500 contact hours normally with a single skill objective.
- (k) "Certified" when used to modify audit refers to an audit in accordance with Generally Accepted Auditing Standards (GAAS) and in accordance with the auditing standards set forth in the book, "Government Auditing Standards" issued by the Comptroller of the United States (often referred to as the "yellow book" standards). If, However, the entity is required for other reasons to have conducted a certified audit in accordance with O.M.B., Circular A-133, such an audit shall be an acceptable substitute for the audit required pursuant to these regulations.
- (l) "Closed enrollment" means instruction provided between an educator or educational service to a group or business on a private contractual bases, whereby public solicitation does not occur and the instructional provider is given a list of enrollees to train at no cost to the students.
- (m) "College" means (1) a unit of a university offering specialized degrees or (2) a postsecondary institution offering courses of study leading to traditional undergraduate college degrees Some examples of traditional degrees are: Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Science, and Bachelor of Fine Arts.
- (n) "Commission" means the Tennessee Higher Education Commission.
- (o) "Contact Hour" (clock hour) refers to actual directed or supervised instructional time, not to be less than 50 minutes for every 60 minutes of time.
- (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, refers to educational credentials which include but are not limited to: certificates, diplomas, letters of designation, degrees, transcripts or any other papers generally taken to signify progress or completion of education / training at a postsecondary educational institution.
- (q) "Degree" means letters of designation or credential or a title from a postsecondary level program acceptable to and so authorized by the Commission and/or an accrediting body recognized by the U.S. Department of Education. Typically used in some form is the term 'associate', 'bachelor', 'masters' or 'doctor' in the credential designation.
- (r) "Diploma program" means a program of instruction offering technical and some basic course work. Some general or peripheral courses may be included. The program shall generally range for more than 500 contact hours but less than contact requirements for the Associates degree.
- (s) "Doctoral degree" means a credential issued to students who complete a program consisting of a bachelor's degree plus at least 90 semester hours or 135 quarter hours of graduate credit or equivalent.
- (t) "Enrollment" refers to those students who have completed the institution's application forms, submitted a financial deposit where required, and have actually attended one or more sessions of classes, or, in the case of home study programs, received one or more lessons.

- (u) "Educational service" means an individual or business established to provide services such as, but not limited to, a testing service, test preparation or a business that assists people in gaining academic credit for life experience, non-accredited courses or non-college training.
- (v) "General education courses" are general education core or academic subjects intended to broaden communication/language skills, contribute to the intellectual growth of the student and give balance to the total program beyond the area of vocational or professional concentration,
- (w) "Independent certified public accountant" means a CPA not associated with the institution or its owners, especially in such a way that a conflict of interest or appearance of conflict arises.
- (x) "Institute" means a postsecondary institution offering courses of study and training not usually associated with traditional liberal arts degrees. Appropriate credentials awarded would include applied science degrees, certificates, and diplomas such as the Associate of Applied Science (A.A.S).
- (y) "Institutional director" means the institutional executive designated by the institution to assume responsibility for the conduct of the institution and its agents within these rules and the Act. Further, the institutional director will serve as the official contact for all business conducted between the institution and the Commission and maintain complete authorization files.
- (z) "Long Distance Learning" means a system and process that connects learners with distributed learning resources through delivery systems at a distance such as correspondence, video tape, audio tape, telecommunications, computer resources, computer network system or an electronic delivery system, where there is physical separation of the instructor and student.
- (aa) "Master's degree" means a credential issued to students who complete a program consisting of a bachelor's degree plus at least 30 semester credit hours or 45 quarter credit hours, or equivalent.
- (bb) "Non-exempt institution" means all postsecondary institutions not specifically exempted under provisions of T.C.A. §49-7-2004 of the Act or Section 1540-01-02-.05 of these rules and means all instructional sites which must have separate authorization unless, in the view of the Commission, the instructional locations are in sufficient proximity for facilitation of support services and administration.
- (cc) "Out-of-state", as applied to describe an authorized postsecondary educational institution, means an institution that maintains its primary campus in another state, but has physical presence in Tennessee.
- (dd) "Physical presence" means actual presence within the state of Tennessee for the purpose of conducting activity related to: a postsecondary educational institution; an educational service; dissemination of educational credentials; enrollment; solicitation or advertising. Physical presence as further outlined for purposes of authorization shall include but not be limited to:
 1. An instructional site within the state.
 2. Instruction within or originating from Tennessee designed to impart knowledge with response utilizing teachers, trainers, counselors etc., or computer resources, or computer linking (e.g. internet), or any form of electronic telecommunications;
 3. Dissemination of an educational credential from a location within the

state;

4. An agent, recruiter, institution or business that solicits for enrollment or credits or for the award of an educational credential;
 5. Advertising, promotional material or public solicitation in any form that targets Tennessee residents or uses local advertising markets in the state for institutions seeking, holding or required to hold a certificate of authorization.
- (ee) "Postsecondary education 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. ~~means an entity which maintains a place of business within Tennessee, or solicits business in Tennessee, and which offers or maintains a course or courses of instruction or study, or at which place of business such a course or courses of instruction or study are available through field instruction, classroom instruction or by long distance learning or both to a person or persons for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, service or industrial occupation, for a vocation, or for the award of an educational credential, except as excluded by the provisions of these rules and the Act.~~
- (ff) "Quarter" is a period of instruction into which the academic year may be divided. A quarter must consist of at least 10 weeks.
- (gg) "Quarter credit hour" means a measurement of scholastic attainment earned by receipt of instruction of one classroom lecture hour per week for one quarter or two hours of laboratory experience per week for one quarter, or three hours of intern/externship experience per week or the equivalent number of hours.
- (hh) "Residence course" means a course in which the student comes to an institutional campus or instructional site as opposed to a course where the student stays at home (i.e. Long Distance Learning).
- (ii) "SACS Commission on Colleges" means the Commission of the Southern Association of Colleges and Schools which accredits degree-granting postsecondary institutions.
- (jj) "School" means (1) A unit within a college or university that offers specialized instruction (i.e., a school of engineering). (2) An institution that offers specialized instruction in areas (i.e., driving, modeling, basic travel training) not usually associated with college or university education. Appropriate credentials awarded would include certificates and/or diplomas. Institutions using the name of "school" do not usually offer degrees.
- (kk) "Semester" is a period of instruction into which the academic year may be divided. A semester must consist of at least 15 weeks.
- (ll) "Semester credit hour" means a measurement of scholastic attainment earned by receipt of instruction of one classroom lecture hour per week for one semester or two hours of laboratory experience per week for a semester, or three hours of intern/externship experience per week or the equivalent number of hours.
- (mm) "Solicitation" means inducing or attempting to induce a resident of Tennessee to sign, at any off-campus location, an enrollment agreement to attend a

postsecondary educational institution.

- (nn) "Tuition" shall mean but not be limited to, any money or fee involving the student, actually charged or tracked as a bookkeeping item for instruction / training provided.
- (oo) "Unearned tuition" means at any given time, the total of refunds due former students, all tuition and fees that have or will be collected from students prior to graduation and which would be refundable pursuant to 1540-01-02-.17 of these rules, and any tuition and fees collected in advance from prospective students.
- (pp) "University" means a postsecondary institution that provides facilities for teaching and research, offers traditional undergraduate and graduate degrees at the baccalaureate and higher level, and is organized into largely independent colleges or schools offering undergraduate, graduate, and/or professional programs. Some examples of traditional degrees are: Bachelor of Arts, Bachelor of Science, Bachelor of Fine Arts, Master of Arts, Master of Science, Master of Fine Arts, Master of Business Administration, Doctor of Philosophy, and Doctor of Education.
- (qq) "Vocational" in description of a program or institution means that which is organized primarily for job entry or upgrading of job skills that would result in a new job title or position.

1540-01-02-.05

Exemption.

- (1) T.C.A. § 49-7-2004 of the Act 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. ~~In addition to institutions exempt by Tennessee Code Annotated, Chapter § 49-7-2004, the following institutions are exempt from the annual reporting and the provisions of these regulations:~~

- (a) ~~any entities offering e~~Education, instruction, or training that ~~are~~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, ~~without charge, (1) to its membership or apprentices, or (2) without charge,~~ except that the department or organization 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 ~~degrees or educational credentials such as but not limited to diplomas or special certifications~~ 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 refrain from any misleading representations. Such misleading 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 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 apply to determinations of exemption:

- (a) Institutions that clearly qualify as exemption under the Act ~~and/or~~ these regulations after the Commission staff review shall be considered exempt from authorization without a vote of the Commission.
 - (b) ~~Institutional~~ Any institution or program exemption is subject to annual Commission staff review and/or revocation any time the activity deviates from the original determination factors for exemption.
 - ~~(c) Exemptions secured under this section of the rules are effective for each authorization year beginning on July 1, except as individuals or groups of institutions are notified prior to June 15 preceding any authorization year by a letter from the Executive Director of the Commission which shall state the bases for removal of any exemption.~~
 - ~~(dc) Exemptions~~ 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 as they pertain to individual institutions whenever it is determined by the Commission that an institution exempted by the Act or these regulations has not acted in accordance to the purpose of T.C.A. § 49-7-2002, 'Legislative intent'.
- (3) To request a determination of exemption, institutions shall submit a descriptive narrative explaining how the institution and/or program(s) qualifies 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: ~~Institutions or educational providers seeking an exemption status (or not wanting to pursue authorization) that in the opinion of Commission staff do not clearly qualify under the exemption categories given in the Act and these rules will be required to complete an Exemption Request Form. The form shall include but not be limited to:~~ **copies of all institutional materials; brochures; advertising; state charter or business license; and organizational ties and/or contracts with other educational providers** and a descriptive narrative of how the organization qualifies for exemption specifically citing the Act and/or rules. 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.
- ~~(a) Based upon the submitted material Commission staff shall make a written determination of institutional status. If the institution is aggrieved by that determination, the party may appeal in the manner provided by Rule 1540-01-02-.02(2)(b) and T.C.A. § 49-7-2010(b).~~
- (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).

1540-01-02-.07

Institutional Applications.

- (1) Application deadline:
 - (a) Incomplete submissions as given below in Authorization - What Constitutes a Complete Application, or applications submitted after the established deadline may be deferred to the next quarterly meeting at the discretion of staff.

(b) Institutions that voluntarily or involuntarily defer an application before the Committee will have two additional Committee/Commission meetings to complete, correct and/or submit the application by that established deadline date. Failure to complete the application process in the established time extension will require a new application and loss of all previously paid fees.

1. Exceptions must be requested in writing and granted by the Executive Director.

(2) Authorization - What Constitutes a Complete Application:

(a) Prior to operation, which includes advertising, recruitment and solicitation, institutions seeking or required to hold an authorization must submit on forms provided by the Commission, a completed application which includes at least the following:

1. a title or name of the institution in compliance with these rules;
2. a copy of the Tennessee state charter as filed with the Secretary of State (incorporated) or local business license (sole proprietorship);
3. ownership and/or controlling officers;
4. address and general description of facilities;
5. list of instructional equipment for each program (owned or leased);
6. qualifications for instructional staff and supervisors;
7. designation of an institutional director for each site responsible for authorization contracts and maintenance of records and all other duties as described under Personnel and Instructor Qualifications (1540-01-02-.16);
8. definition of any administrative structure above the director with the signature of the official that will notify the Commission if the director is replaced;
9. a check or money order payable to the State Treasurer for Tennessee for such fees as prescribed under these rules;
10. institutional surety bond as described by rule 1540-01-02-.07 or as prescribed by T.C.A. §49-7-2013;
11. a copy of the enrollment contract or agreement described in these regulations;
12. a copy of the Enrollment Disclosure Standards (1540-01-02-.13) checklist if not incorporated within the enrollment agreement (contract);
13. information pertaining to institutional facilities ownership, length of any lease and time in present quarters. Information must include total square feet, available floor space for conducting programs, and subtotals for classrooms, offices, and library space (with number of volumes held). Instructional equipment (specify owned or leased) must be listed and described. Current verification of fire and sanitation inspections of educational facilities (and student housing owned by institution) must be filed as described in 1540-01-02-.07 of these rules;

14. a draft or copy of the institutional catalog (see 1540-01-02-.11);
 15. a complete description of the proposed educational programs in compliance with the Act and these rules;
 16. a complete syllabus for each course proposed that demonstrates sufficient content and depth for the proposed level of the program and credential offered;
 17. any specific requirements as outlined under degree granting and/or non degree granting sections of these regulations;
 18. if participating in federal student financial aid programs, a copy of the most recent audits or program reviews of such programs by any applicable non-profit, state or federal agencies, including, but not limited to, any student guarantee agency and the United States Department of Education;
 19. evidence of institutional financial stability as follows:
 - (i) sufficient finances to establish and conduct proposed operation;
 - (ii) audited financial statements consistent with generally accepted accounting principles and signed by a certified public accountant not associated with the institution or its owners;
 20. the balance sheet in the financial statement must reflect owner's (proprietorship, partnership, corporation, other, etc.) assets and liabilities.
- (3) Each application for a certificate of authorization or change of ownership must be signed by the applicant and signature(s) must correspond with required names on surety bonds. If the applicant is a partnership, all partners must sign. If the applicant is a corporation, it must be signed and certified by the president and secretary; all officers of the corporation must be listed.
- (4) A separate application for authorization, which is site specific, must be made for each location located outside of reasonable walking distance from the main site. The Commission staff may make reasonable exceptions for narrow purpose, highly structured programs at multiple locations where, in view of the Commission, administrative requirements are limited and precise.
- (5) The applicant institutional director must sign and date, on forms provided by the Commission, the director's intention to:
- (a) conduct the institution in accordance with the Act and rules established by the Commission;
 - (b) advertise or solicit using institutional employees familiar with these rules;
 - (c) advise the Commission within a reasonable time in advance if the controlling officers change or the school ceases operation;
 - (d) notify the Commission of staff changes by forwarding staff information forms for new staff and informational letter for staff terminations;
 - (e) advise the Commission of any application to operate in another state (Tennessee institutions only);

- (f) sign significant operational documents (such as those vouching for accuracy of staff information, moral character, program revisions, etc.); and
 - (g) forward, if participating in federal financial aid programs, a copy of each audit of such programs by applicable state and federal agencies, applicable non-profit, state or federal agencies, including, but not limited to, the Tennessee Student Assistance Corporation and the United States Department of Education.
- (6) Bond Requirements for Institutions:
- (a) Institutions must, on forms provided by the Commission, secure for student indemnification purposes, from a surety company qualified and authorized to do business 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 qualified and 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.
 - ~~(a) Institutions not exempted from surety bond provisions, must on forms provided by the Commission, secure for student indemnification purposes, from an insurance company licensed in Tennessee, a surety bond for the penal sum of \$10,000 for in-state institution and \$20,000 for out-of-state education institution, including branch campuses as specified in T.C.A. 49-7-2013, except as follows:~~
 - 1. ~~In-state institutions with substantially less unearned tuition or student exposure than \$10,000 may post a surety bond equal to 125% of the maximum unearned tuition or student exposure rounded upward to the nearest thousand dollars (prior written administrative agreement by the Commission staff is required).~~
- ~~(7) Out of state institutions must, on forms provided by the Commission, secure a surety bond for agents in the penal sum of \$5,000 per agent from a surety company authorized to do business in Tennessee with the applicant institution as principal. Such applications must be accompanied by verification by the issuing agency that the individual seeking a permit is covered by a \$5,000 surety bond.~~
- ~~(8) Bonds provided by institutions under Section 1540-01-02-.07(7) must be accompanied by the name, office address, and phone number of the issuing insurance company representative and the bond must be site specific.~~
- ~~(9) Bonds provided by institutions under Section 1540-01-02-.07(7) must be identified on the top half of the first page by the name and the address of the institution. Bonds and verification of bonds should be forwarded to the Commission by institutional directors, and not directly from issuing companies.~~

~~(10) Certificates of deposit or a cash deposit with a bank may be accepted in lieu of the bond with 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.~~

~~(447)~~ Fire and Sanitation Inspections:

- (a) Applicant institutions must secure, from appropriate local agencies, documentation that fire and sanitation codes are met by the proposed instructional facilities. If such inspections are unavailable, the institution must present a copy of a recent letter from the local inspection agency indicating that such inspections are unavailable.
- (b) Tennessee institutions seeking initial authorization and renewal must maintain documentation in their authorization records that a fire and sanitation inspection has been successfully passed during the past twelve months and, further, the institution must notify the Commission of the most recent inspection dates as part of the renewal application. If such inspections are unavailable, the institution must present a copy of a recent letter from the local inspection agency indicating that such inspections are unavailable.
- (c) Out-of-state institutions must forward to the Commission a copy of fire and sanitation inspection reports and these reports must be made at least every twelve months.
- (d) Commission staff may seek supplemental fire and/or sanitation reports from appropriate local or state agencies.

~~(428)~~ New Ownership / Change in Ownership:

- (a) The following constitutes new ownership:
 - 1. in the case of ownership by an individual, when more than 50% of the institution has been sold or transferred;
 - 2. in the case of ownership by a partnership or a corporation, when more than 50% of the institution or of the owning partnership or corporation has been sold or transferred;
 - 3. when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the institution.
- (b) A person or persons purchasing an institution authorized to operate shall comply with all the requirements for securing an initial, new authorization including new program applications for each program. In addition, a copy of the sales contract(s), bill(s) of sale, deed(s), and all other instruments necessary to transfer ownership of the institution shall be submitted to the Commission.
- (c) In the event of a change of ownership, a new owner or governing body must notify the Commission within 10 days after the change in ownership and request from the Executive Director conditional authorization to operate until temporary authorization can be acquired under standard established procedure by recommendation of the Committee for Postsecondary Educational Institutions and affirmative vote of the Commission.
- (d) The sale or transfer of ownership interest after the death of an owner of an institution to either a family member or a current stockholder of the corporation is not considered a change in ownership, and the executive director may determine that other transfers should also be excluded from these requirements.

(439) New Program or Change in Program:

- (a) Vocational program names and objectives must generally coincide with or be equated with the *Dictionary of Occupational Titles* published by the U.S. Department of Labor and/or the *Classification of Instructional Programs* published by the U.S. Office of Education, National Center for Education Statistics.
- (b) New institutions proposing to offer programs similar to those conducted by Tennessee institutions under the Tennessee desegregation plan must submit a description of the anticipated effect of the proposal on the racial composition of higher education institutions in Tennessee.
- (c) New institutions must submit a rationale with supporting data to justify initiation of programs proposed.
- (d) Authorized institutions must submit to the Commission a supplementary application if additional programs are proposed during any authorization year and the program must be authorized prior to operation, which includes advertising or solicitation. Applications must be received by the quarterly deadline established by Commission staff to be included on the ensuing Committee and Commission agenda.
- (e) Ongoing institutions that make changes to an existing program(s) previously approved by the Commission must file a New Program Application if program changes exceed 25% in one calendar year, or if in the opinion of staff a significant change has occurred. Changes of less than 25% should be reported by letter as a file item to the Commission detailing changes made. All changes must be reflected in the institutional catalog.
- (f) Institutions shall not arbitrarily add a course or courses to an existing program in which a student would incur additional time and expense beyond the catalog requirements at the time of enrollment, unless the addition is in response to: demonstrated educational necessity; a reasonable program completion period had elapsed; state approval agencies; recognized accrediting agencies or for requirements of professional certifications or licenses. Under approval conditions, the institution shall provide written notification to the Commission and give adequate notice to all students affected prior to any change.

(4410) New Location / Change of Address:

- (a) An application from an authorized institution to reflect a new location shall be filed and include all documents designated by the Executive Director as being necessary with the appropriate fee. Documents shall include but not necessarily limited to: (1) evidence of satisfactory health inspection, (2) evidence of satisfactory fire inspection, (3) all physical material and building requirements given under Initial Authorization. Approval may be issued after the new facilities have been inspected and the application is complete. If a move is beyond 10 miles and a student is prevented from completing the training at the new location as determined by the Executive Director, a full refund of all moneys paid and a release from all obligations will be given to the student or loan holder.

1540-01-02-.08

Regulations For Specific School Types.

- (1) General:

- (a) Institutions offering programs of legal interest to other state agencies must, if directed by the Commission, provide information necessary for the dual review of the program. (For example, any institution proposing a teacher education program for the purpose of teacher licensure must also be reviewed by the State Board of Education).
- (b) Authorized institutions that promote, advertise or use prepared materials of any entity that offers vocational / professional certifications (that are not part of the school's authorized educational credential) or certification exams, (e.g. national certifying exam for Phlebotomy) must demonstrate to the Commission clear benefit to the students prior to usage. The Commission upon review may rule to:
 - 1. allow promotion and usage because of benefits to the student;
 - 2. allow promotion and usage but with clear disclosure to the students with language such as, 'this certification is voluntary and is not required for employment in the state of Tennessee' or 'this certification is voluntary and is not necessarily used as a standard of recognition for employment within the industry';
 - 3. deny usage. (see Prohibitive Acts 1540-01-02-.18).
- (c) Unauthorized institutions that promote, advertise or use prepared materials of any entity that offers vocational/professional certifications may be required to become authorized for such activity.
- (d) Institutions must adhere to all copyright laws and observe intellectual property rights in conducting the school.
 - 1. Using video tapes or other forms of telecommunication as a large portion of the contact hours in a program or on a per class basis for the purpose of granting educational credit, must have implied consent by purchase or the written consent of that instructor and/or the institution that produced the educational material, prior to incorporating them into the curriculum.

(2) Non Degree Granting Institutions:

- (a) Non-degree programs which are designed primarily for job entry or upgrading of skills must be described in clock (contact) hours.
- (b) Non-degree programs typically prepare individuals for employment and do not require courses beyond those specific to the job or its field with program length sufficient to effect outcomes.
 - 1. Institutions must provide a minimum program length that adequately prepares students for entry level employment.
 - 2. Program lengths that exceed standard or currently acceptable times or program periods established by regulations and/or statutes must justify expansion of training in terms of exceptional student benefits. Such programs may also be required to review curriculum to evaluate consolidation of classes and course material.

(3) Degree Granting Institutions:

- ~~(a) New institutions seeking authorization to offer degrees in the state of Tennessee or new program applications for a degree program must submit the application by the deadline date established by Commission staff, which shall be 45 to 60 days~~

~~prior to the quarterly meeting of the Committee on Postsecondary Educational Institutions.~~

- (~~b~~a) All degrees offered must be approved by name and designation by the Commission. No institution may offer traditional liberal arts degrees or professional degree designations such as those given in the definitions under "college" and "university" unless previously approved by a recognized regional accrediting body.
1. An exception may be approved by the Executive Director upon recommendation of Commission staff.
- (~~b~~b) Authorization to offer any degree in the state will require either institutional accreditation as defined in these regulations or authority to grant degrees by affirmative vote of the Commission. Accredited institutions shall be deemed during initial authorization to have met the minimum requirements to offer degrees.
- (~~c~~a) Non accredited institutions seeking authority to grant degrees in the state must meet in addition to the requirements in these regulations for temporary or regular authorization, the additional fee as given in these regulations and demonstrate compliance with, but not limited to the following standards:
1. the operation shall incorporate instructional procedures, texts and materials appropriate to the purpose, curriculum and standards of postsecondary degree granting institutions offering similar programs in the state;
 2. 25% of the total program must be in general education courses and should be indicated separately in the curriculum presented;
 3. a syllabus for each course offered;
 4. library resources and holdings that shall contain up-to-date titles, be available and accessible to all enrolled students and commensurate with the proposed degree level;
 5. demonstration that the degree and the program has merit and value academically, professionally or vocationally in Tennessee;
 6. master and doctorate level degrees must demonstrate in the curriculum and outcomes increasing levels of critical, analytical and interpretive thinking, use of primary documents or resources and independent research skills.
- (~~c~~b) Undergraduate degree programs must include at least twenty-five percent of the program in general education courses unless the institution can demonstrate program accreditation requirements which are lesser or for a non accredited institution offering or proposing an associate degree level, demonstrate to the Commission that because of the occupational/technical nature of the program that a student would not benefit in the job from general education courses and demonstrate the need to use that 25% of the program for job skills courses. All general education courses must be taught by holders of baccalaureate degrees with at least twenty-five percent of the general education staff with earned master's degrees or equivalent.
- (~~c~~c) Graduate degree programs, in addition to staffing and study time requirements in these rules, must provide experienced research staff to direct graduate research papers, provide a program of sufficient length and arrangement to facilitate

student to student and student to staff exchange of ideas, provide appropriately credentialed staff in collateral areas, and provide access to a wide range of current reference materials in the subject field.

(g) Degree program admission policies must be at least the following:

1. undergraduate degrees must require a high school diploma or equivalency, and
2. graduate degrees must require at least a baccalaureate degree from an institution judged to be appropriate by the Commission.

(4) Long Distance Learning:

- (a) Required authorization of long distance learning institutions shall be reviewed based upon Commission staff evaluation of physical presence. Computer networks or other electronic delivery systems or other forms of long distance learning that might have institutional components in multiple locations outside of this state will be reviewed based upon origination of but not limited to any of the following from Tennessee: instruction, institutional administration or issuance of an educational credential.
 1. No ruling by the Commission regarding authorization or exemption of a long distance learning provider will be interpreted to limit review by any other state agency concerning issues of consumer protection and disclosure.
- (b) All authorized long distance learning institutions must provide a printed catalog, enrollment disclosure statement and a contract as required in these regulations. Institutions that enroll students by means such as computer network or telecommunications must provide evidence that the student has acknowledged receipt of the required information.
- (c) Home study or long distance learning institutions must meet directly and indirectly all requirements of the Act and these regulations and must seek authorization for a specific location, assign specific administrative responsibilities at each separately authorized site to a director for adequate and appropriate staffing to serve the stated purpose and to make reports as directed by these rules, and as requested by the Commission staff.
- (d) Long distance learning courses or programs must consist of at least the following:
 1. a preliminary lesson or set of instructions on how to study by the home study method, or adequate study instructions per assignment;
 2. current and accurate text or lesson materials; and
 3. instructional service or individualized feedback on each unit assignment which must be based on examination questions or problem assignments which thoroughly stress the important phases of the subject presented.
 4. demonstration that instruction in each course including general education courses is presented by a qualified instructor(s), and that required student evaluation or feedback for each course or lesson is also by a instructor qualified in that specific course or subject matter area.

5. evidence that adequate library or research resources are available to all students that may enroll appropriate to the type and level of the educational program and credential offered.
6. educational goals and overall program goals are achievable through long distance learning and that graduates of distance education exhibit skills and knowledge equivalent to resident programs of a similar nature.

(5) Bartending Schools:

- (a) Pursuant to TCA §49-7-115, all schools involved in training in the areas of management, operation, procedures or practice of dispensing alcoholic beverages or bartending shall include instruction in the problems of alcohol abuse and the effect of alcohol consumption on highway safety.

(6) Truck Driving (CDL) Schools:

- (a) Authorized truck driving schools may advertise in the 'help wanted' section of the newspaper classifieds provided that the advertisement adheres to all other regulations given in 1540-01-02-.20 and within the advertisement it clearly indicates with specific language that this is a "school advertisement", "advertisement for training" or a "training opportunity with [school's name]".
- (b) Advertisements may refer to truck lines or carriers by name with the written permission of that company and use language such as "training agreement with", "training contract with" or "exclusive training for [carrier's name] in Tennessee". If a school mentions or alludes to multiple training agreements with carriers, the advertisement must give a specific number and have prior approval from Commission staff. All claims related to carriers must be documented and on file at the school.

(7) Modeling Schools:

- (a) Modeling schools that also operate a placement or talent agency must maintain clear separation in function and advertising the agency from the school.
- (b) Talent seminars, interviews or 'talent searches' may not be used to enroll individuals in modeling schools or training.
- (c) Schools that operate as a 'finishing school', exclusively for personal department or for enrichment may not advertise or conduct courses that implies or suggests vocational modeling or related goals.

~~(8) Computer Training:~~

- ~~(a) Businesses offering limited computer training in hardware, software, delivery systems or any related technology for clients or customers (closed enrollment) directly related to a sale of equipment or services are exempt from the provisions of authorization.~~
- ~~(b) 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 courses using various software are offered concurrently toward a vocational goal. (e.g. word processing software offered toward secretarial goals).~~
- ~~(c) Businesses offering 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 of that training in the state.~~

(98) Teacher Training (K-12) or Licensing or Recertification:

- (a) The Tennessee State Board of Education or the Commission may request a dual review of any institution or business with physical presence in Tennessee offering courses related to but not limited to teacher (K-12) licensing, recertification or career ladder. For accredited institutions with teacher education programs using long distance learning (but using targeted direct mail advertising), the Commission may grant a waiver for authorization if State Board of Education or a local public school district has accepted, endorsed or approved for graduate credit transfer any portion of the program. Such a waiver shall not be granted for any institution outside of the provisions stated above and may be individually retracted if in the opinion of the Commission the advertising is misleading regarding outcomes or credits earned.

~~(10) Seminars / Workshops:~~

- ~~(a) Seminars or workshops of short duration that are motivational, enrichment, recreational, avocational or solely for professional enhancement as determined by Commission staff shall be considered exempt from authorization requirements.~~
- ~~(b) Upon review by Commission staff a seminar/workshop provider regardless of length that presented the instruction in such a way to suggest a vocational end may be required to become authorized in the state, or clarify through public advertising that the seminar/workshop is in fact enrichment or recreational.~~

1540-01-02-.11

Institutional Catalog.

- (1) Each institution must publish a catalog or brochure (a draft copy may be provided for original application) which must include at least the following information;
 - (a) the name and address of the institution;
 - (b) identifying data, such as catalog number and publication date;
 - (c) table of contents;
 - (d) names of owners and officers, including any governing boards, and faculty with credentials for position;
 - (e) the institutional calendar, including holidays, enrollment periods and the beginning and ending dates of terms, courses, or programs;
 - (f) the institutional enrollment procedures and entrance requirements, including late enrollment, if permitted;
 - (g) the institutional attendance policy including minimum attendance requirements, and the circumstances under which a student will be interrupted for unsatisfactory attendance and the conditions under which a student may be readmitted;
 - (h) the institutional policy covering satisfactory progress with an explanation of any grading system used and a description of any probation policy and a description of the institutional system for making progress reports to students;
 - (i) the institutional policy regarding student conduct, including causes for dismissal and conditions for readmission;

- (j) a description of each program offered including objectives, costs, length, program components or course requirements, or in the case of correspondence instruction, the number of lessons;
- (k) a description of the placement assistance available and, if none, so state;
- (l) a description of the facilities and equipment used for educational programs and the address of training site;
- (m) the policy concerning credit granted for previous education, training, and experience and, if none, so state;
- (n) the refund and cancellation policy which must describe the procedure for determining the official date of termination;
- (o) in catalogs (except for out-of-state degree-granting institutions which choose to make no reference to the Commission) which describe educational programs conducted in Tennessee and with enrollment contracts used by programs outside of Tennessee, a statement provided within the first four pages of the catalog and on the signature page of enrollment contracts, which must read as follows:

The (name of institution) is authorized by the Tennessee Higher Education Commission. This authorization must be renewed each year and is based on an evaluation by minimum standards concerning quality of education, ethical business practices, health and safety, and fiscal responsibility;

- (p) a description of the student grievance procedure, a listing of the title, address, and telephone number of the institutional employee(s) designated to receive student complaints. If the institution used a mediation clause in its enrollment agreement, the catalog must describe the steps required of the student and/or the institution to initiate the mediation process. The address and telephone number of the licensure staff of the Commission must be in the catalog for grievances not settled at the institutional level;
- (q) specific information pertaining to transferability of credit earned to another institution, with language sufficient to describe limitations on transfer of credit. Institutions have a responsibility to advise potential enrollees that transfer of credit is controlled by the receiving institution and that accreditation does not guarantee transferability. Suggested language is as follows:

"(name of institution) is a special purpose institution. That purpose is (fill in mission statement). This purpose does not include preparing students for further college study. Students should be aware that transfer of credit is always the responsibility of the receiving institution. Whether or not credits transfer is solely up to the receiving institution. Any student interested in transferring credit hours should check with the receiving institution directly to determine to what extent, if any, credit hours can be transferred."

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

- (2) Use of supplemental pages must be done in a way as to ascertain that supplemental pages become an effective part of the catalog and must show an effective date and be presented to students prior to enrollment or payment of fees;
- (3) Catalogs should be written in a way and at a level which enables prospective enrollees to make informed decisions; and

- (4) Lesser information requirements may be included in the institutional catalog or brochure when the applicant can satisfactorily demonstrate to the Commission that some of the above are not applicable.
- (5) Full time students should have a reasonable expectation to complete programs as printed in the institutional catalog at the time of enrollment.

1540-01-02-.13 Enrollment Agreements and Disclosure Standards.

- (1) Accredited institutions that provide and administer a Title IV financial assistance program and grants will follow federal disclosure guidelines. Such institutions will not be required to duplicate any state disclosure item if that disclosure is part of federal or accreditation standards.
- (2) Institutions prior to enrolling an individual shall require the prospective student to sign and date a form to be placed in the student file, which is either part of the enrollment contract or a pre-enrollment check list verifying that the student:
 - (a) toured the institution;
 - (b) received an institutional catalog;
 - (c) was given the time and opportunity to review the institutional policies in the catalog;
 - (d) knows the length of the program for full time and part time students in academic terms and actual calendar time;
 - (e) has been informed of the total tuition and fee cost of the program;
 - (f) has been informed of the estimated cost of books and any required equipment purchases such as a stenography machine, computer, specialized tools, art supplies etc.;
 - (g) has been given a copy of the institutional cancellation and refund policy;
 - (h) understands what 'transferability of credits' means and the specific limitations (if any) should the institution have articulation agreements;
 - (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, Nashville, TN 37243-0830, (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).
- (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," shall be ~~documentation that the student received graduation placement data exactly as presented to the Commission during the last reauthorization cycle in the following format:~~
- (a) ~~A statement: "For the program entitled _____, I have been informed that the current withdrawal rate is __%, or in the past 12 months ___ students enrolled in this program and ___ completed this program."~~
- (b) ~~A statement: "For the program entitled _____, I have been informed that for the students who graduated, the job placement rate is __%, or in the past 12 months ___ were placed in their field of study out of ___ students who graduated from this program."~~
- (4) Liberal arts schools or professional schools that typically do not report vocational placement data may request a waiver of 1540-01-02-.13(3) above.
- (5) An enrollment contract shall include but not be limited to:
- (a) full and correct name and location of the institution;
 - (b) name, address and social security number of the student;
 - (c) date training is to begin and program length;
 - (d) full-time or part-time status of the student;
 - (e) projected date of graduation/completion as a full-time or part-time student;
 - (f) program title;
 - (g) total cost of the program, including itemized separate costs for tuition, fees, books and any required equipment purchases;
 - (h) cancellation and refund policy;
 - (i) verification that the student has received an exact signed copy of the agreement.
- (6) Institutions shall contractually guarantee total cost of tuition for 1200 contact hours or one calendar year from the time of enrollment for full and part time student.
- (7) Programs less than 1200 clock (contact) hours must have a an enrollment contract with a set total tuition.
- (8) Programs longer than 1200 clock (contact) hours that increase tuition cost after the initial 1200 hours or one year period, must provide counseling related to the tuition increase.
- (9) Tuition increases that in the opinion of the Commission are excessive, unreasonable and exceeds initial disclosure to the student may result in an in depth audit of the institution at the school's expense to assure the Commission of financial stability.

1540-01-02-.14

Financial Standards.

- (1) Institutions administering Title IV financial assistance programs will maintain all required guidelines and standards.

- (2) The Commission and its staff may share information with the Tennessee Student Assistance Corporation and other state and federal agencies as appropriate.
- (3) The institution shall maintain financial and business practices in line with common business procedures utilizing standard accounting practices.
- (4) The institution shall maintain and be prepared to demonstrate financial resources adequate to meet the following:
 - (a) facility maintenance and overhead;
 - (b) staff and faculty payroll;
 - (c) books, supplies and / or equipment utilized by students;
 - (d) general operating costs including printing and advertising;
- (5) Institutions shall be able to demonstrate annual financial planning through a budget. New degree granting program schools must establish financial planning that reflects at least a three year plan which includes anticipated income and expenses.
- (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) ~~For multi-campus institutions, or for institutions owned by one the same parent company may submit, an audited consolidated corporate financial statement shall be routinely required. The staff, Committee, or Commission, however, may request additional campus or institution specific information where needed to protect the public interest. The audited income statement must be compiled for each institution, or group of institutions owned by the same company, authorized to operate under the Act;~~
 - (b) ~~The balance sheet must reflect owner's (proprietorship, partnership, corporation, or other) assets and liabilities. In the preparation of these statements, it should be noted that goodwill is not generally considered a current asset unless it is being amortized;~~
 - (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. Current financial statements on each site separately authorized under the Act must be filed annually.~~
 - (e) ~~Within five 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 on forms provided by the Commission staff.~~
- (7) ~~The institution must submit an operating statement and balance sheet to the Commission within four months of the end of the institutional fiscal year. In addition, if a regular or~~

~~certified audit is available, it should be submitted within four months of the end of the institutional fiscal year as well.~~

- ~~(87)~~ At any time, the Commission may require a certified audit of the institution when there are questions about the institution's financial stability.
- ~~(8)~~ All institutions seeking authorization must maintain a business account with a financial institution that is federally insured in said institution's name.

1540-01-02-.16 Personnel and Instructor Qualifications.

- (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 that demonstrates the minimum qualifications and must submit such documentation and a School Personnel Application at any time upon request from the Commission staff.
- ~~(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.
- ~~(23)~~ The method of administration and procedure for staff selection must be defined in a way that each employee has specific duties and responsibilities.
- ~~(34)~~ Administrative personnel generally encompasses individuals that oversee areas as outlined in operational and administrative standards. This includes by function, but is not limited to titles of an institutional director; financial aid administrator; director of admissions; director of education; business officer or manager; director of student services (including counseling and placement) and the registrar. Support and clerical staff is not included as administrative personnel, but shall be included for reporting purposes on re-authorization forms annually.
- ~~(45)~~ Administrative personnel at authorized institutions must be graduates of an accredited college or university or have sufficient background and training in his/her area of responsibility.
- ~~(56)~~ Each institution must designate one person as the institutional director, who is responsible for the institution's program, the organization of classes, maintenance of the institutional facilities, maintenance of proper administrative records, signing documents pertaining to authorization and all other administrative matters related to authorization.
- ~~(67)~~ Institutional owners or the controlling board must ensure that each authorized site has a institutional director on that location for at least 50% of the operational time each week the school has students present unless other provisions have been approved by the Commission staff.

- (78) The institutional director implicitly accepts knowledge of and responsibility for compliance with the Act and these regulations including but not limited to advertising, records, contracts, required benchmarks, annual deadlines and fee payments.
- (89) The institutional director at authorized institutions must be a graduate of an accredited college or university with at least one year experience in administration, institutional management, or the total years of administration/institutional management experience/higher education shall equal at least five years.
- (910) Directors of authorized institutions must maintain on site a separate current copy file of materials filed with the Commission as part of their current authorization which includes the application, documentation of appropriate bonding, financial reports, agent permit documentation, and fire and safety reports.
- (4011) If the institution employs a director of education, that director shall meet the same requirements as an instructor as specified in these rules and shall also have either one year supervisory experience or a relevant post-bachelor's degree.

(4112) Instructors:

- (a) Instructional staff for all institutions must be selected at a minimum on the basis of credentials demonstrably higher, on the basis of experience and training, than the level to be taught these rules.
- (b) Instructors in a trades related or specific skill areas must have documented proficiency and practical applied experience in that trade or skill.
- (c) An instructor must hold the appropriate certificate, license, or rating if the subject is a trade requiring certificate, license, or rating.
- (d) An instructor must be qualified by education and experience/background demonstrably higher than the level to be taught and must meet the following qualifications as minimum requirements:
1. Minimum for doctorate level:
 - (i) Hold a doctorate degree from a college or university judged to be appropriate by the Commission and either:
 - (I) a doctorate degree with a major or concentration in the subject area to be taught; or
 - (II) a doctorate not in the subject area but with a minimum of one year of practical experience within the last five years in the subject area to be taught and completion of nine semester hours or 12 quarter hours of doctoral level courses in the subject.
 2. Minimum for masters level:
 - (i) Hold a masters or higher degree from a college or university judged to be appropriate by the Commission and either:
 - (I) a masters or higher degree with a major or concentration in the subject area to be taught; or
 - (II) a masters or higher degree not in the subject area but with a minimum of one year of demonstrated practical

experience within the last five years in the subject area to be taught and completion of nine semester hours or 12 quarter hours in graduate level courses in the subject.

3. Minimum for a baccalaureate level:

- (i) Hold a baccalaureate or higher degree from a college or university judged to be appropriate by the Commission and either:
 - (I) a baccalaureate or higher degree with a major or concentration in the subject area to be taught; or
 - (II) a baccalaureate or higher degree not in the subject area but with a minimum of one year of demonstrated practical experience within the last five years in the subject area to be taught and completion of nine semester hours or 12 quarter hours in the subject. Additional years of documented experience in the subject area may be substituted for semester / quarter hour requirements.

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.

~~(12) Evidence of qualifiable education, experience, or training (including official transcripts) for each instructor must be maintained on-site at the location.~~

- (13) The Executive Director may approve a variance from these 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 ~~personnel form~~ 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.
- (14) Instructors shall be evaluated at least annually by students, as well as the director or chief academic/instructional officer, and the institution shall have on file at the campus evidence of such evaluations.
- (15) ~~Agents and Recruiters:~~
- (a) ~~Institutional a~~ Agents as defined by the Act and these regulations Rule 1540-01-02-.03 ~~must submit an Agent Permit a~~ Application, on forms as provided by the Commission staff, and must receive approval ~~have authorization and an agent permit from the Commission staff and secure the appropriate bond prior to any solicitation. The applicant application~~ must be accompanied by the following:
1. ~~new applicants must forward~~ 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 of \$5,000 per agent of an out-of-state institution or as specified in Rule 1540-01-02-.07 of these rules; 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 immediately upon 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. ~~Agents must have separate permits to represent separate institutions unless they are commonly held. Mutual agreement by institutions is required.~~
- (d) All agents must verify by signature that they have read and are familiar with rules on advertising and solicitation and must verify intent to follow rules as set forth in Fair Consumer Practices.
- (e) Institutional directors, not marketing offices, are responsible for actions of agents.
- (f) The agent shall be under the control of the institution, and the institution is responsible for any representations or misrepresentations, expressed or implied, made by the agent.
- (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 may 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 he or she was solicited by a non-licensed agent.

- (h) An agent is prohibited from inappropriate activities in procuring enrollees including, but not limited to the following:
 - 1. administering the admission test;
 - 2. advising students about financial aid other than informing the student of the general availability of financial assistance;
 - 3. giving false, misleading, or deceptive information about any aspect of the institution's operation, job placement, or salary potential;
 - 4. representing that a program has sponsorship, approval, characteristics, uses, benefits, or qualities which it does not have;
 - 5. soliciting enrollments in a program which has not been approved by the Commission.
- (i) An agent must display the current permit to all prospective students and other interested parties.

1540-01-02-19

Fair Consumer Practices and Student Complaints.

- (1) All institutions authorized by the Commission and their representatives shall be required to operate in accordance with fair consumer practices to ensure current and prospective students that nothing is hidden and verbal and written representations by the school are accurate, such that students can make appropriate decisions concerning their investment of time and money.
- (2) Fair consumer practices means honesty, fairness and disclosure to students in the areas of: recruitment, admissions, contractual agreements, student financial assistance, obligations to repay student loans, placement assistance and job placement rates, advertising, refund policies, the meaning and recognition of different types of accreditation, the transferability of the institution's credits to other postsecondary schools and also includes misrepresentation concerning competitor schools.
 - (a) Information regarding fair consumer practices shall be included in the institution's usual publications such as the catalog and school brochures and must always be provided by institutional recruiters and agents.
 - (b) Accredited institutions may apply accreditation standards of fair consumer practices.
- (3) Findings by Commission staff and/or ongoing complaints by current or prospective students that show a pattern of misinformation, misrepresentation, lack of disclosure or discrepancies between verbal and written information, intimidation or coercion may require corrective public announcements or in the opinion of the Commission significant deviation from fair consumer practices may result in penal fines and/or conditional authorization or revocation of agent or institutional authorization.
- (4) Institutions authorized under these rules must report to the Commission in writing within 30 working days any unresolved written complaints about their operation of which they are knowledgeable (including media accounts of complaints). Such complaints shall be resolved or determined to be irresolvable by the institution within 30 working days of the receipt of the written complaint at the Commission offices. Complaints shall be

considered as a factor in the decision when authorization to operate or continue in operation is sought.

- (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 similar 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.

1540-01-02-.26 Return of Regulatory Fees

- (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 paid of the total reauthorization fees collected 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.

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Sequence Number: 12-13-14
Rule ID(s): _____
File Date: 12 | 10 | 2014
Effective Date: 12 | 10 | 2014

Filing Form for Stay of Effective Date on Rules, Withdrawal of Stay, and Withdrawal of Rules

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
Zip:	37243-0830
Phone:	(615) 253-8857
Email:	julie.woodruff@tn.gov

Type of Action on Rule:

Stay of Effective Date of Rules

Rule Filing Date: (mm/dd/yy)
Rule Original Effective Date: (mm/dd/yy)
Length of Stay (not to exceed 75 days): _____
New Effective Date of Rule Filing: (mm/dd/yy)

Notice of Withdrawal of Stay

Stay Filing Date: (mm/dd/yy)
Stay Effective Date: (mm/dd/yy)
New Effective Date of Rule Filing: (mm/dd/yy)

Notice of Withdrawal of Rules

Rule Filing Date: 09/02/2014
Rule Effective Date: 12/31/2014

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. 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

Date: 12/10/2014

Signature: *Richard G. Rhoda*

Name of Officer: Dr. Richard G. Rhoda

Title of Officer: Executive Director



My Commission Expires AUG. 23, 2016

Subscribed and sworn to before me on: 12-10-14

Notary Public Signature: *Corsina Dickson-Wiley*

My commission expires on: 08-23-2016

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Filed with the Department of State on: 12/10/2014

Tre Hargett
 Tre Hargett
 Secretary of State

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Sequence Number: 11-20-14
 Rule ID(s): _____
 File Date: 11/19/2014
 Effective Date: 12/31/2014

Filing Form for Stay of Effective Date on Rules, Withdrawal of Stay, and Withdrawal of Rules

Agency/Board/Commission:	Tennessee Higher Education Commission
Division:	Division of Postsecondary School Authorization
Contact Person:	Doug Garrett
Address:	G-11 War Memorial Building
Zip:	37243
Phone:	(615) 741-3056
Email:	doug.garrett@capitol.tn.gov

Type of Action on Rule:

Stay of Effective Date of Rules

Rule Filing Date:	<u>(mm/dd/yy)09/02/14</u>
Rule Original Effective Date:	<u>(mm/dd/yy)12/01/14</u>
Length of Stay (not to exceed 75 days):	<u>30 days</u>
New Effective Date of Rule Filing::	<u>(mm/dd/yy)12/31/14</u>

Notice of Withdrawal of Stay

Stay Filing Date:	<u>(mm/dd/yy)</u>
Stay Effective Date:	<u>(mm/dd/yy)</u>
New Effective Date of Rule Filing:	<u>(mm/dd/yy)</u>

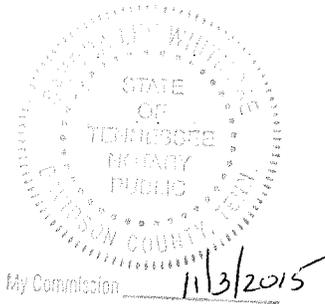
Notice of Withdrawal of Rules

Rule Filing Date:	<u>(mm/dd/yy)</u>
Rule Effective Date:	<u>(mm/dd/yy)</u>

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/RuleTitle 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



Date: November 19, 2014

Signature: _____

[Handwritten Signature]

Name of Officer: Doug Garrett

Title of Officer: Legislative Attorney

Subscribed and sworn to before me on: 19th day of November, 2014

Notary Public Signature: Janelle Lee Whitmore

My commission expires on: 11/3/2015

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Filed with the Department of State on: 11/19/2014

[Handwritten Signature]

Tre Hargett
Secretary of State

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