

DATE: March 19, 2009

SUBJECT: Rulemaking Hearing - Authorization and Regulation of Postsecondary Education Institutions and their Agents – Rule 1540-1-2-.25 Fees

ACTION RECOMMENDED: No action to be taken at this time

BACKGROUND INFORMATION: Rule Chapter 1540-1-2 contains the postsecondary rules promulgated pursuant to Part 20 of Title 49, Chapter 7. The rules as a whole guide the oversight of postsecondary educational institutions and dictate the standards institutions must follow. Specifically, Rule 1540-1-2-.25 lists the fees paid by postsecondary educational institutions. Paragraphs 3 and 4 of this rule are the subject of this rulemaking hearing.

On May 22, 1992, legislation went into effect granting authority to THEC to set fees annually in order to collect revenues sufficient to cover costs of regulation. Thereafter, THEC initiated a rulemaking proceeding and a rule setting forth the fees went into effect on September 28, 1992. Since 1992, the renewal fee calculated from the institution’s gross tuition collected has remained the same. The only fee changes since 1992 are as follows: (1) the change of ownership fee of \$500 was deleted effective October 1998; (2) the \$1,600 fee for the annual renewal application for out-of-state institutions recruiting Tennessee students was deleted effective August 2008; and (3) the change of name fee of \$300 was added effective August 2008.

The costs associated with the regulatory function set forth in Part 20 of Title 49, Chapter 7 have increased significantly since 1992. The increase is due in part to the addition of five (5) employees to the staff of the Division of Postsecondary School Authorization (DPSA) through the FY08-09 appropriations bill. However, absent the addition of the five positions, current fees are insufficient to cover the continuing cost of regulation. Recognizing such, THEC initiated the present rulemaking proceeding through the filing of a Notice of Rulemaking Hearing on January 21, 2009. The rule revisions contained in the notice were crafted with the intention of fully covering the budget of DPSA for the upcoming fiscal year.

Also on January 21, 2009, DPSA sent all authorized institutions via electronic mail a copy of the Notice of Rulemaking Hearing and provided specific notice that institutions could file written comments by February 19, 2009 and/or appear at the hearing to provide oral comments. To date, four institutions have filed written comments. The comments are generally similar and cover the following topics: (1) the increase is too great; (2) timing is inappropriate given the poor economy; (3) the fee increase will result in the loss of small schools; (4) the fee increase will cause institutions to reconsider future investments in Tennessee; (5) fees are not comparable to other Southern states; (6) the increase

will create a precedent for significant increases in the future; and (7) THEC indicated that it could absorb the cost of the new staff.

PURPOSE OF HEARING: The purpose of this hearing is to afford the public their statutory right to be heard. The presiding officer may limit oral presentations if the length of the hearing otherwise would be unduly increased by reason of repetition. To ensure that all interested parties have sufficient opportunities to be heard, DPSA staff will follow up on any questions that may be raised after the public hearing.

The hearing will begin with a summary of the factual basis for the proposed rule revisions. DPSA has requested of the authorized institutions that anyone who wishes to speak arrive early so that a list of those that will be commenting can be created for the presiding officer's use. Finally, DPSA has engaged a court reporter to transcribe the comments.

A vote will not be taken at the conclusion of the hearing. Instead, it is expected that the Commission will vote on the proposed rules at the April 23, 2009 Commission meeting. In advance of the April meeting, DPSA will forward to each Commissioner copies of all written comments, a copy of the transcript, and any recommended revisions to the proposed rules.

OVERVIEW OF FEE INCREASE: The proposed fee increases include the following:

- An increase in set fees such as initial authorization and new programs.
- Reauthorization fees are increased to \$750 increments for each \$100,000 of gross tuition earned up to \$4,000,000 instead of the current \$350 or less increments.
- An expansion of the fee scale from \$4,000,000 to \$50,000,000; which includes a \$750 increment increase for each \$1,000,000 of gross tuition earned.

CURRENT RULE PROVISIONS: Rule 1540-1-2-.25 (3) and (4)

(3) The fees to be collected by the Commission hereunder shall accompany an application for authorization to operate an institution or an application for an agent's permit, or other application required by these rules in accordance with the following schedule:

(a)	Initial Authorization Application	\$2,500
	Each Proposed Program	\$300
(b)	Authority to Grant Degrees	\$1,000
(c)	New Programs	\$300
(d)	Agent Fee In-State	\$100
(e)	Agent Fee Out-of-State	\$200
(f)	Change of Address	\$300
(g)	Change of Institutional Name	\$300
(h)	Non-compliance Fines (per day, per violation)	\$500
(i)	Late Renewal Fees (in addition to base renewal fee)	\$500

- (4) Reauthorization fees for in-state institutions are based upon an institution's annual gross tuition revenue collected from July 1 to June 30 of the previous year. Reauthorization fees for out-of-state institutions are based on an institution's annual gross tuitions collected from Tennessee students from July 1 to June 30 of the previous year. In each instance the reauthorization fee shall be assessed according to the following schedule:

	Minimum Tuition Collected	Maximum Tuition Collected	Reauthorization Fees
1.	\$0	\$100,000	\$350
2.	100,001	200,000	700
3.	200,001	300,000	1,050
4.	300,001	400,000	1,400
5.	400,001	500,000	1,750
6.	500,001	600,000	2,100
7.	600,001	700,000	2,450
8.	700,001	800,000	2,800
9.	800,001	900,000	3,150
10.	900,001	1,000,000	3,500
11.	1,000,001	1,100,000	3,850
12.	1,100,001	1,200,000	4,200
13.	1,200,001	1,300,000	4,350
14.	1,300,001	1,400,000	4,500
15.	1,400,001	1,500,000	4,650
16.	1,500,001	1,600,000	4,800
17.	1,600,001	1,700,000	4,970
18.	1,700,001	1,800,000	5,140
19.	1,800,001	1,900,000	5,310
20.	1,900,001	2,000,000	5,480
21.	2,000,001	2,100,000	5,650
22.	2,100,001	2,200,000	5,820
23.	2,200,001	2,300,000	5,990
24.	2,300,001	2,400,000	6,160
25.	2,400,001	2,500,000	6,330
26.	2,500,001	2,600,000	6,500
27.	2,600,001	2,700,000	6,570
28.	2,700,001	2,800,000	6,640
29.	2,800,001	2,900,000	6,710

30.	2,900,001	3,000,000	6,780
31.	3,000,001	3,100,000	6,850
32.	3,100,001	3,200,000	6,920
33.	3,200,001	3,300,000	6,990
34.	3,300,001	3,400,000	7,060
35.	3,400,001	3,500,000	7,130
36.	3,500,001	3,600,000	7,200
37.	3,600,001	3,700,000	7,400
38.	3,700,001	3,800,000	7,600
39.	3,800,001	3,900,000	7,800
40.	3,900,001	4,000,000	8,000
41.		>4,000,000	8,000 + .0001 of gross tuition over \$4,000,000

PROPOSED RULE CHANGES:

Paragraphs (3) and (4) of Rule 1540-01-02-.25 are amended by deleting the present language in its entirety and replacing it with the following:

- (3) The fees to be collected by the Commission hereunder shall accompany an application for authorization to operate an institution or an application for an agent's permit, or other application required by these rules in accordance with the following schedule:
- (a) Late Renewal Fee (in addition to base renewal fee) \$1,000
 - (b) Renewal Extension Fee (in addition to base renewal fee) \$500
 - (c) Initial New School Application \$3,000
 - Each Proposed Program \$500
 - (d) Associate Degree Granting Institutions (in addition to base initial application and program fee) \$1,000
 - (e) Bachelor Degree Granting Institutions (in addition to base initial application and program fee) \$2,000
 - (f) Masters Degree Granting Institutions (in addition to base initial application and program fee) \$3,000
 - (g) Doctoral Degree Granting Institutions (in addition to base initial application and program fee) \$4,000

- (h) Authority to Grant Degrees – Unaccredited Institutions (in addition to base initial application, program and degree level fees) \$1,000
- (i) New Programs – Authorized Institutions \$500
- (j) Degree Level Elevation – Authorized Institutions \$1,000
- (k) Agent Fee In-State – Initial Application \$500
- (l) Agent Fee In-State – Renewal Application \$250
- (m) Agent Fee Out-of-State– Initial Application \$600
- (n) Agent Fee Out-of-State– Renewal Application \$300
- (o) Institutional Name Change \$500
- (p) Change of Address \$500
- (q) Non-compliance Fines (per day, per violation) \$500

(4) Reauthorization fees for in-state institutions are based upon an institution’s annual gross tuition revenue collected from July 1 to June 30 of the previous year. Reauthorization fees for out-of-state institutions are based on an institution’s annual gross tuitions collected from Tennessee students from July 1 to June 30 of the previous year. In each instance the reauthorization fee shall be assessed according to the following schedule:

Minimum Tuition Collected	Maximum Tuition Collected	Reauthorization Fee
\$0	\$100,000	\$750
100,001	200,000	1,500
200,001	300,000	2,250
300,001	400,000	3,000
400,001	500,000	3,750
500,001	600,000	4,500
600,001	700,000	5,250
700,001	800,000	6,000
800,001	900,000	6,750
900,001	1,000,000	7,500
1,000,001	1,100,000	8,250
1,100,001	1,200,000	9,000
1,200,001	1,300,000	9,750
1,300,001	1,400,000	10,500
1,400,001	1,500,000	11,250
1,500,001	1,600,000	12,000
1,600,001	1,700,000	12,750
1,700,001	1,800,000	13,500
1,800,001	1,900,000	14,250
1,900,001	2,000,000	15,000
2,000,001	2,100,000	15,750

2,100,001	2,200,000	16,500
2,200,001	2,300,000	17,250
2,300,001	2,400,000	18,000
2,400,001	2,500,000	18,750
2,500,001	2,600,000	19,500
2,600,001	2,700,000	20,250
2,700,001	2,800,000	21,000
2,800,001	2,900,000	21,750
2,900,001	3,000,000	22,500
3,000,001	3,100,000	23,250
3,100,001	3,200,000	24,000
3,200,001	3,300,000	24,750
3,300,001	3,400,000	25,500
3,400,001	3,500,000	26,250
3,500,001	3,600,000	27,000
3,600,001	3,700,000	27,750
3,700,001	3,800,000	28,500
3,800,001	3,900,000	29,250
3,900,001	4,000,000	30,000
4,000,001	5,000,000	30,750
5,000,001	6,000,000	31,500
6,000,001	7,000,000	32,250
7,000,001	8,000,000	33,000
8,000,001	9,000,000	33,750
9,000,001	10,000,000	34,500
10,000,001	11,000,000	35,250
11,000,001	12,000,000	36,000
12,000,001	13,000,000	36,750
13,000,001	14,000,000	37,500
14,000,001	15,000,000	38,250
15,000,001	16,000,000	39,000
16,000,001	17,000,000	39,750
17,000,001	18,000,000	40,500
18,000,001	19,000,000	41,250
19,000,001	20,000,000	42,000
20,000,001	21,000,000	42,750
21,000,001	22,000,000	43,500
22,000,001	23,000,000	44,250
23,000,001	24,000,000	45,000
24,000,001	25,000,000	45,750
25,000,001	26,000,000	46,500
26,000,001	27,000,000	47,250
27,000,001	28,000,000	48,000
28,000,001	29,000,000	48,750
29,000,001	30,000,000	49,500
30,000,001	31,000,000	50,250
31,000,001	32,000,000	51,000
32,000,001	33,000,000	51,750

33,000,001	34,000,000	52,500
34,000,001	35,000,000	53,250
35,000,001	36,000,000	54,000
36,000,001	37,000,000	54,750
37,000,001	38,000,000	55,500
38,000,001	39,000,000	56,250
39,000,001	40,000,000	57,000
40,000,001	41,000,000	57,750
41,000,001	42,000,000	58,500
42,000,001	43,000,000	59,250
43,000,001	44,000,000	60,000
44,000,001	45,000,000	60,750
45,000,001	46,000,000	61,500
46,000,001	47,000,000	62,250
47,000,001	48,000,000	63,000
48,000,001	49,000,000	63,750
49,000,001	50,000,000	64,500
50,000,001	and up	65,250 + .001 of gross tuition over \$50,000,000