

Agenda Item: I.D.5.

DATE: July 28, 2011

SUBJECT: Proposed Rule Revisions

ACTION RECOMMENDED: Adopt the rule revision

Background Information: In August 2009, the Division of Postsecondary School Authorization (DPSA) held workshops to provide training to the staff of the non-exempt postsecondary educational institutions. During the training there were a few comments made in regard to the implementation of Rule Chapter 1540-01-02, Authorization and Regulation of Postsecondary Education Institutions and Their Agents.

At that meeting, DPSA staff announced a willingness to revisit any rule or policy if it could be shown that the regulatory purpose of the rule or policy is no longer valid or could be accomplished through a means less stringent for the institutions. Over the past two years there has been much discussion with institutions that have availed themselves of the process. In fact, several suggestions have already been implemented.

Most recently, DPSA staff met with three groups of institutions – unaccredited, nationally accredited, and regionally accredited as well as with the Tennessee Association of Independent Colleges & Schools. Following these meetings, DPSA drafted proposed rule revisions and sent those proposed revisions to all authorized institutions and interested persons via email on May 27, 2011. The email gave recipients the opportunity to comment and asked that all comments be submitted by June 24, 2011.

DPSA received substantive comments from just four institutions – Remington College, H&R Block, Capella University, and Virginia College School of Business and Health. After considering the comments, DPSA placed the proposed revisions on the agenda of the July 7, 2011, meeting of the Committee on Postsecondary Educational Institutions. On June 30, 2011, DPSA sent the Committee the rule revisions. At the meeting, the Committee was given a detailed explanation of the rule revisions and the comments submitted thereon. Thereafter, the Committee voted to recommend adoption by the Commission of all of the rule revisions.

Summary of Comments: A summary of the comments and DPSA staff's responses follows.

- Remington College and Virginia College School of Business and Health commented on Rule 1540-01-02-.08(3)(b) suggesting that it was inappropriate to distinguish between national and regional accreditation. Rule 1540-01-02-.08(3)(b) restricts the use of traditional degree names to regionally accredited institutions unless an institution receives an

exception. The revision to the rule describes in detail what an institution must provide in order to receive an exception from the Executive Director. The proposed revision does not change the accreditation distinction currently in effect, a distinction that the Commission has formally recognized since at least 1991. DPSA opines that the revision provides an institution with a better understanding of how to plan for and obtain an exception. DPSA further asserts that the addition of subparagraph (b), parts 1. thru 3. will help to ensure that students of nationally accredited institutions that receive an exception will have more options available if they choose to transfer credits.

- H&R Block suggested that the IRS Competency Exam be added to the list in Rule 1540-01-02-.05(1)(d) [revised as .05(1)(e)]. The purpose of the rule is to exempt programs designed primarily to teach individuals how to take a test; the premise being that the individual received the substantive training elsewhere. H&R Block's suggestion would operate to exempt programs designed to teach tax preparation skills. DPSA opines that the training offered by H&R Block is not analogous to the training offered, for example, to prepare a person to take the state bar examination. In the case of the former, the training is the initial training in the subject whereas in the case of the latter, the training is designed to prepare students to take a test and the substantive training occurred while enrolled in law school.
- Capella University offered the following comments:
 - The institution suggested that institutions such as itself should be permitted to receive a waiver of the requirement in Rule 1540-01-02-.10(5) to provide placement rates. DPSA opines that institutions such as Capella University may request a waiver currently and under the proposed revisions. As in the past, under the language of the revised rule, DPSA will generally grant requests for a waiver when institutions do not typically report vocational placement data. The only difference created by the revised wording is that DPSA will now consider exceptions on a program, rather than institution, level. As to implementation, another difference is that DPSA will consider requests in light of the new U.S. Department of Education regulations requiring disclosure of placement rates for all gainful employment programs offered by proprietary institutions and public and nonprofit institutions.
 - Capella University asserts that the requirement in Rule 1540-01-02-.13(6) [revised as .13(4)(j)] that institutions contractually guarantee the cost of tuition for 1200 contact hours or one calendar year may result in Tennessee students being charged a different rate than other students. DPSA notes that institutions can use language in the enrollment agreement that is compliant with the rules and that affords institutions the flexibility needed to avoid the outcome described by Capella.
 - Rule 1540-01-02-.15(5) lists the items to be included in the Master Student Registration List, which institutions provide annually to DPSA. The list includes student employment information gathered at the time of

enrollment. Capella asserts that students will not be willing to provide employer information. DPSA notes that the information is to be gathered at the time of the student's enrollment, and institutions are not being asked to update the information throughout the student's enrollment. DPSA expects institutions to make every effort to obtain the information; however, adverse action will not be taken against an institution in the event that a student refuses to provide the information.

- With regard to Rule 1540-01-02-.26, which describes the circumstances under which the Commission will return regulatory fees to institutions, Capella University comments that the rule would cost the state money to implement and that it would be difficult for institutions to budget for regulatory costs. The institution proposed that the Commission reduce the current fees. DPSA notes that the fees were adopted in an effort to ensure that DPSA is able to cover its expenses. DPSA further explains that the idea of returning fees in excess of a specified amount grew out of conversations with institutions during the 2009 rulemaking when the fees were increased.

Procedural Posture: The proposed revisions are before you today to decide whether to adopt them. In the event that the revisions are adopted, they will be sent to the Attorney General pursuant to Tenn. Code Ann. § 4-5-211. At that time, the Attorney General will review the legality and constitutionality of the rules. Once approved by the Attorney General, the rules will be sent to the Secretary of State's office pursuant to Tenn. Code Ann. § 4-5-202(a)(2).

The process described above does not require a rulemaking hearing on the front end. However, persons or entities may file a petition for a public hearing after the rules have been published by the Secretary of State. In the event that this happens, this matter may be brought back before the Commission.

Proposed Revisions: Attached

**PROPOSED REVISIONS TO:
CHAPTER 1540-01-02, AUTHORIZATION AND REGULATION OF
POSTSECONDARY EDUCATION INSTITUTIONS AND THEIR AGENTS**

NOTE: There are no proposed revisions to Rules 1540-01-02-.01, .04, .07, .12, .17, or .21 thru .25.

TABLE OF CONTENTS

1540-01-02-.01	Preface	1540-01-02-.14	Financial Standards
1540-01-02-.02	Role of the Commission, Committee and Staff	1540-01-02-.15	Institutional and Student Records
1540-01-02-.03	Definitions	1540-01-02-.16	Personnel and Instructor Qualifications
1540-01-02-.04	Determination for Required Authorization	1540-01-02-.17	Cancellation and Refund
1540-01-02-.05	Exemption	1540-01-02-.18	Prohibited Acts
1540-01-02-.06	Minimum Authorization Standards and Requirements	1540-01-02-.19	Fair Consumer Practices and Student Complaints
1540-01-02-.07	Institutional Applications	1540-01-02-.20	Advertising and Solicitation
1540-01-02-.08	Regulations for Specific School Types	1540-01-02-.21	Authorization Status
1540-01-02-.09	Annual Reauthorization	1540-01-02-.22	Causes for Adverse Action
1540-01-02-.10	Required Minimum Standards	1540-01-02-.23	Institutional Closure
1540-01-02-.11	Institutional Catalog	1540-01-02-.24	Tuition Guarantee Fund (TGF)
1540-01-02-.12	Admissions Standards	1540-01-02-.25	Fees
1540-01-02-.13	Enrollment Agreements and Disclosure Standards	1540-01-02-.26	Return of Regulatory Fees

1540-01-02-.02 ROLE OF THE COMMISSION, COMMITTEE AND STAFF

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(2) Role of the Executive Director:

(a) The Executive Director is empowered to take any urgent action, based on these rules and Act, necessary to conduct this consumer protection regulatory function, during the periods between authorization action meetings of the Commission, subject to ratification by the Commission provided that:

1. the Executive Director shall give written notice of such action to the affected party;
2. the Executive Director shall instruct the affected party that they may notify the Commission within ten (10) **business** days if the aggrieved party desires a hearing and review by the Commission, and that otherwise the action shall be deemed final;
3. at the same time the Executive Director shall give written notice of the action to members of the Commission.

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(3) Role of the ~~Committee on Postsecondary Educational Institutions~~**Postsecondary Education Institution Committee:**

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Authority: T.C.A. §49-7-2014. **Administrative History:** Original rule filed March 26, 1974; effective April 24, 1974. Amendment filed August 7, 1978; effective November 29, 1998. Repeal and new rule filed May 15, 1985; effective July 1, 1985. Repeal and new rule filed January 24, 1990; effective May 1, 1990. Amendment filed December 15, 1992; effective March 31, 1993. Repeal and new rule filed June 24, 1998; effective October 28, 1998. Amendment filed June 6, 2008; effective August 20, 2008.

DPSA Comments: The revision to .02(2)(a)2 clarifies that the ten day time period is calculated using business days. The revision to .02(3) inserts the name of the Committee as stated in T.C.A § 49-7-207. **These revisions should improve users' understanding of the rules.**

1540-01-02-.03 DEFINITIONS

- (1) The following definitions are complementary to definitions in Tenn. Code Ann. §49-7-2003 and have the following meanings, unless the context clearly indicates otherwise:

....

(h) ~~“Articulation agreement” means an arrangement between two higher education institutions approved and signed by the chief executive officers and constructed by faculty in the discipline that equates for transfer of a defined set or block of academic credits that will meet requirements of a specified academic degree program major at the degree-awarding institution for the purposes of the Division of Postsecondary School Authorization, refers specifically to “program articulation,” i.e., the process of developing a formal, written agreement that specifically breaks down courses (or sequences of courses within a program) from institution(s) that are comparable, and acceptable in lieu of specific course requirements at similar institution(s).—An articulation agreement is a legal document with the appropriate signatures that specifies which courses at said institution(s) may be transferred to meet general education, major requirements, and electives at the receiving institution. These agreements, maintained by the Articulation Officers at both institutions, facilitate the successful transfer of students between the two entities, to include, but are not limited to, associate and baccalaureate level institutions and ultimately comprehensive or research universities for masters and doctoral level programs.~~

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(p) ~~“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 include, but are not limited to: Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Business Administration, Bachelor of Science, Bachelor of Fine Arts, Master of Arts, Master of Science, Master of Fine Arts, Master of Business Administration, Doctor of Philosophy, Doctor of Psychology, and Doctor of Education.~~

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~~(s) “Credential” 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 and/or training at a postsecondary educational institution.~~

[re-letter current (t) and (qq)]

~~(qq) “Traditional degree” shall mean degrees including, but not limited to: Associate of Arts, Associate of Science, Bachelor of Arts, Bachelor of Business Administration, Bachelor of Science, Bachelor of Fine Arts, Master of Arts, Master of Science, Master of Fine Arts, Master of Business Administration, Doctor of Philosophy, Doctor of Psychology, and Doctor of Education.~~

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(tt) ~~“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 Business Administration, Bachelor of Science, Bachelor of Fine Arts, Master of Arts, Master of Science, Master of Fine Arts, Master of Business Administration, Doctor of Philosophy, Doctor of Psychology, and Doctor of Education.~~

Authority: T.C.A. §49-7-2005, Public Chapter 766, Acts of 2006. **Administrative History:** Original rule filed March 26, 1974; effective April 4, 1974. Amendment filed August 7, 1978; effective November 29,

1998. Repeal and new rule filed May 15, 1985; effective July 1, 1985. Repeal and new rule filed January 24, 1990; effective May 1, 1990. Amendment filed December 15, 1992; effective March 31, 1993. Repeal and new rule filed June 24, 1998; effective October 28, 1998. Amendment filed February 3, 2000; effective June 28, 2000. Repeal and new rule filed June 6, 2008; effective August 20, 2008

DPSA Comments: The revision to .03(1)(h) details what an articulation agreement must contain for purposes of the proposed revision to .08(3)(b)3. **This should benefit institutions by providing a more concise definition.**

The revisions to .03(1)(p) and .03(1)(tt) and the addition of .03(1)(qq) result from the determination that the term “traditional degree” should be defined separately and not as part of the definitions of “college” and “university.” **This revision should make the rules more user-friendly and improve understanding.**

DPSA is proposing to delete .03(1)(s) because .04(2)(b) references only the statutory definition and two definitions are not needed. **This is a housekeeping item.**

1540-01-02-.05 EXEMPTION

- (1) In addition to institutions exempt by Tenn. Code Ann. §49-7-2004, the following institutions and programs are exempt from the annual reporting requirements and the provisions of these regulations.:
- (a) ~~any entities offering~~ education, instruction or training that ~~is meet 1, 2, 3, or 4 in its entirety as follows:~~
1. maintained or given by an employer or group of employers, for employees or for persons they anticipate employing without charge, payroll deduction or 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 Commission staff; or
 2. maintained or given by a U. S. Department of Labor or state recognized labor organization, without charge, to its membership or apprentices, except that the institution may accept funds provided through a state or federal program that provides adequate institutional and/or programmatic review as determined by 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) Short-term programs, seminars or workshops that are motivational, enrichment, recreational, or avocational as determined by Commission staff shall be considered exempt from authorization requirements. Upon review by Commission staff, a provider that presents the instruction in such a way as to suggest a vocational end may be required to become authorized in the state, or clarify through public advertising that the program, seminar, or workshop is in fact motivational, enrichment, recreational, or avocational. ~~Short-term programs for which all promotional materials and advertisements indicate that the program purpose is exclusively for self-improvement, or instruction that is motivational or avocational in intent as determined by Commission staff.~~
- (c) Short-term programs, seminars or workshops that are solely for professional enhancement as determined by Commission staff shall be considered exempt from authorization requirements. 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.
- (de) Programs that operate under Part 61 of the Federal Aviation Regulations and that provide only avocational training are exempt. Aviation programs that operate entirely under Part 141 of the Federal Aviation Regulations and programs that operate under Part 61 of the Federal Aviation Regulations and that provide vocational training are non-exempt. Oversight of these aviation schools will in no way conflict with oversight provided by the Federal Aviation Administration. While the FAA oversight ensures adequate curricula and safety of the student, the Commission's oversight is focused on protection of the personal and financial interests of the student.
- (ed) ~~Institutions which offer i~~ntensive review courses designed solely to prepare students for graduate and/or professional school entrance exams, certified public accountancy

tests, public accountancy tests, and the bar examination shall be considered exempt from authorization requirements.

(f) 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 representations include:

1. suggesting that the training results in receipt of a credential, such as a degree;
2. listing anticipated salary amounts; and
3. stating that the entity is accredited.

(eg) Bona fide religious institutions that:

1. offer instruction or training without charge or any expense to participants and do not offer degrees of any type within the institution;
2. do not suggest that postsecondary credit may be awarded by another party or transfer in educational credentials from another source;
3. do not offer diplomas/certificates that in the opinion of the Commission replicate letters of designation or degrees.

(h) 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.

(i) 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).

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

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

(b) Any institutional or programmatic exemption is subject to annual 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.~~

(cd) Exemptions can be revoked or amended by the Commission 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 an exemption, 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 submit a descriptive narrative describing how the institution and/or programs qualify for an exemption. The request shall include a citation to the Act and/or rules and documentation supporting the requested exemption such as 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. Based upon the submitted material, Commission authorization staff shall make a written determination.~~

~~(a) Based upon the submitted material Commission staff shall make a written determination of institutional status.~~

~~(4) If the institution is aggrieved by a that determination concerning exemption status, the party institution may appeal seek review as provided for in the manner provided by 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 Commission staff erred, and provide a detailed explanation of each error, including, where applicable, 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 timely received.~~

Authority: T.C.A. §49-7-2002, 49-7-2004, 49-7-2005, 49-7-2006, 49-7-2008. **Administrative History:** Original rule filed March 26, 1974; effective April 24, 1974. Amendment filed August 7, 1978; effective November 29, 1998. Repeal and new rule filed May 15, 1985; effective July 1, 1985. Repeal and new rule filed January 24, 1990; effective May 1, 1990. Amendment filed December 15, 1992; effective March 31, 1993. Repeal and new rule filed June 24, 1998; effective October 28, 1998. Amendment filed February 3, 2000; effective June 28, 2000. Amendment filed June 6, 2008; effective August 20, 2008.

DPSA Comments: 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 DPSA 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)(b) and .08(10) and the addition of .05(1)(c) place all exemptions under .05 and clarify the grounds under which short term programs, seminars, and workshops may be exempt. **This revision should make the rules more user-friendly and improve understanding.**

The revision to .05(1)(d) includes language that appeared in the 1998 version of the rules, but that appears to have been deleted in error. **This is a housekeeping item.**

The addition of .05(1)(f) 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)(h) and (i) and the deletion of .08(8) result in all exemptions being listed under .05. **This revision should make the rules more user-friendly and improve understanding.**

The revisions to .05(2) clarify that either programs or institutions may be granted exemptions. The revisions also remove the language that limits the term of the exemption status. This allows DPSA to award exemptions for an unlimited amount of time while preserving the ability to revoke or amend an exemption as provided for in revised .05(2)(c). **These revisions benefit institutions by simplifying the exemption review process and better describing the procedure for receiving an exemption.**

1540-01-02-.06 MINIMUM AUTHORIZATION STANDARDS AND REQUIREMENTS

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 (14) ~~School~~Institution Name:

- (a) No postsecondary educational institution under the Act and these rules may use the word "university" in ~~their~~its name unless the ~~school~~institution meets the definition of university as set forth in these rules and has been ~~so~~-approved by a regional accrediting body ~~so~~-recognized by the U. S. Department of Education.
- (b) No postsecondary educational institution under the Act and these rules may use the word "college" in ~~their~~its name unless:
1. ~~The school~~ institution meets the definition of college as set forth in these rules;
 2. The institution has been ~~so~~-approved by an ~~regional~~-accrediting body recognized by the U. S. Department of Education to offer degree level programs; and
 3. The institution offers or is seeking approval to offer at least one (1) degree program.~~or~~
- (c) No unaccredited institution may use "college" in its name unless:
1. For institutions authorized prior to October 1, 2006, the institution name includes an appropriate qualifier along with the word "college," such as "career," "vocational," "business," "technical," "art" etc., or in the case of a religious institution, "Bible" or a denominational term or.
 2. For institutions authorized on or after October 1, 2006, the institution name includes an appropriate qualifier preceding the word "college," such as "career," "vocational," "business," "technical," "art" etc., or in the case of a religious institution, "Bible" or a denominational term.
- (d) All institutions ~~authorized after July 1, 1997~~ using "college" in accordance with item 14(c) above, must achieve ~~regional or national~~-accreditation from an accrediting body recognized by the U. S. Department of Education in a timely manner while demonstrating consistent good faith efforts toward achieving that goal. Institutions that fail to make good faith efforts toward accreditation or to achieve accreditation in a timely manner shall be required to remove "college" from the institutional name.
1. ~~New institutions authorized after July 1, 1997 that demonstrate in the application process, that the school is capable by program length, content, adequate physical site and administrative capability of achieving accreditation, may initially use "college" in the institutional title as outlined in 1540-01-02-.06(14)(b) above.~~
 2. Institutions may use "Junior College" as a qualifier in the name of the institution provided that the institution has a current articulation agreement with a regionally accredited college or university. Loss of the articulation agreement will require removal of "Junior" as a qualifier, to be replaced on a schedule agreeable to the Commission with an institutional name in compliance with these rules.
 3. ~~Institutions that fail to make good faith efforts toward accreditation or achieve accreditation in a timely manner shall be required to remove "college" from the institutional title.~~
 4. ~~The Executive Director may consider an exception to 1540-01-02-.06(14)(a), (b) given above for special or unique circumstances. Institutional waivers will be null and void with a change in ownership.~~

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Authority: T.C.A. §49-7-2002, 49-7-2004, ~~49~~, 49-7-2005, 49-7-2006, 49-7-2008. **Administrative History:** Original rule filed March 26, 1974; effective April 24, 1974. Amendment filed August 7, 1978; effective November 29, 1998. Repeal and new rule filed May 15, 1985; effective July 1, 1985. Repeal and new rule filed January 24, 1990; effective May 1, 1990. Amendment filed December 15, 1992; effective March 31, 1993. Repeal and new rule filed June 24, 1998; effective October 28, 1998. Amendments filed June 6, 2008; effective August 20, 2008.

DPSA Comments: The revisions to .06(14)(a) clarify that institutions that use “university” in the institution name must meet the definition of “university” in .03(1)(tt). Additionally, the revision to .06(14)(b) permits institutions to use the word college in the institution name without a qualifier as long as the institution is accredited, meets the definition of “college” in .03(1)(p), and offers at least one degree program. This revision is similar to requirements in other states. The addition of .06(14)(c) maintains the current requirement that an unaccredited institution using college in the institution name include a qualifier. **These revisions benefit institutions by ensuring that the name of an institution appropriately describes the institution and permitting nationally accredited institutions to use the word college in their names without a qualifier.**

The revisions to .06(14)(c) serve to condense and clarify current requirements. The revision removes references to dates that are no longer relevant and the provision allowing the Executive Director to consider an exception to current rule .06(14)(a) and (b). DPSA opines that exceptions are no longer needed given the other revisions to the rules.

1540-01-02-.08 REGULATIONS FOR SPECIFIC SCHOOL TYPES

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(3) Degree Granting Institutions:

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(b) All degrees offered must be approved by name and designation by the Commission. No institution may offer traditional 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. An exception may be approved by the Executive Director upon recommendation of Commission staff. Any request for exception shall be made in writing and include proof of the following:

1. The institution is accredited by a U.S. Department of Education approved accreditor for the specific degree level;
2. The program is accredited by an appropriate accrediting agency if such accreditation is necessary for employment in or licensure by the state; and
3. The institution has articulation agreements with two (2) regionally accredited institutions with physical locations in the Southeast region and the agreements are applicable to at least one of the institutions' physical locations in the Southeast region. An exception may be approved by the Executive Director upon recommendation of Commission staff.

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~~**(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.~~

~~**(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.~~

Authority: T.C.A. §49-7-2003, 49-7-2005, 49-7-2008. **Administrative History:** Original rule filed March 26, 1974; effective April 24, 1974. Amendment filed August 7, 1978; effective November 29, 1998. Repeal and new rule filed May 15, 1985; effective July 1, 1985. Repeal and new rule filed January 24, 1990; effective May 1, 1990. Amendment filed December 15, 1992; effective March 31, 1993. Repeal and new rule filed June 24, 1998; effective October 28, 1998. Amendments filed June 6, 2008; effective August 20, 2008.

DPSA Comments: The addition of .08(3)(b)1 thru 3 were included to describe in detail what an institution must provide in order to receive a exception to the restriction in .08(3)(b). DPSA opines that this addition provides an institution with a better understanding of how to plan for and obtain an exception. DPSA further asserts that the provisions of 1 thru 3 will help to ensure that students of nationally accredited institutions that receive an exception will have more options available if they choose to transfer credits.

DPSA is deleting .08(8) and (10), but is providing for the exemptions in .05. This modification neither expands nor limits the scope of the current exemptions and serves to place all exemptions under .05. **This revision should make the rules more user-friendly.**

1540-01-02-.09 ANNUAL REAUTHORIZATION

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- (3) For all authorized institutions and institutions under Temporary or Conditional Authorization, unless otherwise required by Commission staff, the reauthorization application must be accompanied by the following:

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(c) the latest financial statement for the most recent institutional fiscal year as given under Financial Standards, 1540-1-2-.14, and shall include:

1. a balance sheet (statement of financial position);
2. an income statement (statement of the results of institutional operation including, but not limited to, gross amount of tuition and fees earned and total refunds during the fiscal year);

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Authority: T.C.A. §49-7-2005, 49-7-2006, 49-7-2014. **Administrative History:** Original rule filed March 26, 1974; effective April 24, 1974. Amendment filed August 7, 1978; effective November 29, 1998. Repeal and new rule filed May 15, 1985; effective July 1, 1985. Repeal and new rule filed January 24, 1990; effective May 1, 1990. Amendment filed December 15, 1992; effective March 31, 1993. Repeal and new rule filed June 24, 1998; effective October 28, 1998. Repeal and new rule filed June 6, 2008; effective August 20, 2008.

DPSA Comments: The revision to .09(3) allows DPSA to modify the reauthorization application to accommodate the various types of institutions subject to the Commission's regulation. This revision will allow greater flexibility in the amount and type of information collected and will benefit institutions by permitting DPSA to more easily implement suggestions made by institutions and streamline the reauthorization process by allowing for truncated versions of the application when deemed appropriate by DPSA staff.

The revision to .09(3)(c)2 clarifies that the statement requested is an income statement. This revision should improve understanding of the rules.

1540-01-02-.10 REQUIRED MINIMUM STANDARDS

.....

(5) Beginning with the July 2011 through June 2012 reporting period, Liberal arts schools or professional schools may request a waiver of the requirement to provide placement rates for programs for which the institution does not that typically do not report vocational placement data may be required to report to the Commission either by testimonial, survey or by some other means that program completers have benefited from the instruction.

(a) Requests for waiver shall be made when filing a new program application or, for programs approved prior to the effective date of this rule, by submitting a letter requesting a waiver for each program.

(b) Requests for waiver shall include at a minimum an explanation as to why the institution does not typically report vocational placement data for that program.

(c) Institutions are required to gather the data required for reporting until such time as a waiver is granted.

.....

Authority: T.C.A. §49-7-2005, 49-7-2006. **Administrative History:** Original rule filed March 26, 1974; effective April 24, 1974. Amendment filed August 7, 1978; effective November 29, 1998. Repeal and new rule filed May 15, 1985; effective July 1, 1985. Repeal and new rule filed January 24, 1990; effective May 1, 1990. Amendment filed December 15, 1992; effective March 31, 1993. Repeal and new rule filed June 24, 1998; effective October 28, 1998. Amendment filed June 6, 2008; effective August 20, 2008.

DPSA Comments: The revision to .10(5) describes how to obtain a waiver from the requirement to annually provide placement data and clarifies how institutions should act until a waiver is granted. Additionally, the rule now requires that waivers be received at the program level. These revisions should improve users' understanding of and provide better guidance as to the waiver process.

DPSA notes that this rule was revised with the federal program integrity regulations (published October 29, 2010) in mind and that under the new regulations many institutions will be required to provide placement disclosures to students.

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;

.....

- (o) ~~in catalogs 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 or in a designated state authorization section of the catalog ~~and on the signature page of enrollment contracts, which must that~~ reads 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.”;

.....

- (r) for institutions that disseminate electronic copies of catalogs, a hard copy must be available upon request; and

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

.....

Authority: T.C.A. §49-7-2002, 49-7-2006. **Administrative History:** Original rule filed May 15, 1985; effective July 1, 1985. Repeal and new rule filed January 24, 1990; effective May 1, 1990. Amendment filed December 15, 1992; effective March 31, 1993. Repeal and new rule filed June 24, 1998; effective October 28, 1998. Amendments filed June 6, 2008; effective August 20, 2008.

DPSA Comments: The revision to .11(1)(o) allows institutions to include the mandatory authorization statement in the state authorization section of the catalog. This modification is made to address instances where a catalog is used in multiple states including Tennessee. This revision benefits institutions by affording them greater flexibility.

DPSA added .11(1)(s) as a result of the revision made to .19 concerning cash discounts. This revision seeks to ensure that all students receive the policy and protects an institution in the event of a complaint.

1540-01-02-.13 ENROLLMENT AGREEMENTS AND DISCLOSURE STANDARDS

. . . .

- (2) Institutions prior to enrolling an individual shall require the prospective student to sign and date a pre-enrollment checklist 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 (not applicable ~~for to~~ institutions that deliver all instruction through distance learning on-line);
 - (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) has been given a copy of the completed transferability of credit disclosure statement required by T.C.A. § 49-7-144 and 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."
- (j) has received the most recent withdrawal, completion and in-field placement data as calculated by the Commission by including:
1. 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 ~~Also included, 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:~~
 2. a copy of the report created for the institution by 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"; and
- (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."~~
- (k) has received and understands the institution's cash discount policy (applicable only to those institutions that have a cash discount policy).
- (34) ~~Liberal arts schools or professional schools~~Institutions that receive a typically do not report vocational placement data may request a waiver pursuant to Rule of 1540-01-02-.10(5)3(3) above do not have to include the in-field placement rate for the program in the pre-enrollment checklist.
- (45) Institutions shall require a student enrolling to sign and date Aan enrollment ~~contract~~ agreement, which shall include, but not be limited to, the following items:
- (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 (including costs of any books and equipment required to be purchased from the institution), fees paid to the institution, and estimated costs for items such as books and ~~any~~ required equipment that students may purchases from the institution or a third-party;
 - (h) cancellation and refund policy;
 - (i) verification that the student has received an exact signed copy of the agreement; and-
- (j6) ~~Institutions shall contractually~~a guarantee of the total cost of tuition and fees for 1200 contact hours or ~~one calendar year~~twelve (12) months from the time of enrollment ~~for full and part time student~~.
- (5) When enrolling a student in a single class that is part of an approved program, an institution may modify the pre-enrollment checklist and enrollment agreement as needed to substitute the word class (or other similar word) for the word program where necessary and to qualify any other language so that it applies to the specific class. In no event shall any modification result in less protection for or fewer disclosures to the student.
- (67) Programs less than 1200 clock (contact) hours must have ~~a~~ an enrollment contract with a set total tuition and fees.
- (78) Programs longer than 1200 clock (contact) hours that increase tuition and fees~~cost~~ after the initial 1200 clock (contact) hours or ~~one year~~twelve (12) month period, must provide counseling related to the ~~tuition~~ increase.
- (89) Tuition increases that in the opinion of the Commission are excessive, unreasonable and exceed initial disclosure to the student may be denied and/or result in an in depth audit of the institution at the school's expense to assure the Commission of financial stability.

(919) All tuition changes must be submitted on forms provided by the Commission and approved by Commission staff prior to their inception.

Authority: T.C.A. §49-7-2006. **Administrative History:** Original rule filed May 15, 1985; effective July 1, 1985. Repeal and new rule filed January 24, 1990; effective May 1, 1990. Amendment filed December 15, 1992; effective March 31, 1993. Repeal and new rule filed June 24, 1998; effective October 28, 1998. Amendments filed June 6, 2008; effective August 20, 2008.

DPSA Comments: The revision to .13(2) requires institutions to use a pre-enrollment checklist and clarifies what must be in the checklist. The requirement to use a pre-enrollment checklist is proposed to ensure that students receive the required information. Review of reauthorization applications reveals that institutions often combine the pre-enrollment checklist and enrollment agreement. Often when this occurs, the items in the pre-enrollment checklist are not clearly stated. Additionally, the pre-enrollment checklist by the very title is to be completed in advance of the student signing an enrollment agreement further supporting the need for two documents. This revision seeks to ensure that all students are made aware of the checklist items and protects an institution in the event of a complaint.

The addition to .13(2)(h) is due to the fact that pursuant to T.C.A. § 49-7-144 institutions are required to provide prospective students a written disclosure about transferability of credits. This revision seeks to ensure that all students have received the statutory disclosure and protects an institution in the event of a complaint.

The addition of .13(2)(k) 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 current .13(3) is due to the waiver made by Dr. Richard Rhoda on April 29, 2010. At that time, it was determined that it was necessary to waive the provisions of .13(3), which require that certain language concerning placement, completion and withdrawal data appear in the enrollment agreement, because the language contained in subparagraphs (a) and (b) had become obsolete 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 clearly receive the most recent statistical data.

The revision to .13(4) clarifies that institutions do not have to provide placement data in the pre-enrollment checklist if the institution received a waiver for that program pursuant to .10(5). This is a housekeeping item.

The revisions to current .13(5) result in part from the decision to require that the pre-enrollment checklist and the enrollment agreement be two separate documents. Additionally, some of the revisions to .13(6), (7) and (8) are proposed to better reflect the definition of "tuition" in .03(rr). Lastly, .13(6) and (8) are also revised to clarify that "one year" is a twelve-month period. These are housekeeping items and clarify the rules.

The addition of .13(5) allows institution to customize the language of the pre-enrollment checklist and the enrollment agreement to address instances where a student chooses to enroll in a single class rather than an entire program. The rules did not previously address this.

1540-01-02-.14 FINANCIAL STANDARDS

. . . .

- (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. For multi-campus institutions, or for institutions owned by one (1) parent company, 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; the balance sheet must reflect owner's (proprietorship, partnership, corporation, 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; related parties must be disclosed; related party footnotes, debt agreements with owners, and supplemental footnotes on separate campuses or branches are expected. 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 for the most recent institutional fiscal year. 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. Institutions that have annual gross tuition revenue of one ~~million~~hundred thousand dollars (\$1,000,000) or less may request a waiver 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.

. . . .

Authority: T.C.A. §49-7-2006, 49-7-2015. **Administrative History:** Original rule filed May 15, 1985; effective July 1, 1985. Repeal and new rule filed January 24, 1990; effective May 1, 1990. Amendment filed December 15, 1992; effective March 31, 1993. Repeal and new rule filed June 24, 1998; effective October 28, 1998. Amendments filed June 6, 2008; effective August 20, 2008.

DPSA Comments: The revision to .14(6) is due to the 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 approximately \$10,000 is prohibitive to smaller institutions. This trend has been verified and documented by letters from the certified public accountants of several of our authorized institutions.

1540-01-02-.15 INSTITUTIONAL AND STUDENT RECORDS

- (1) Records of enrollees, completers, and placements must be sufficient to verify data reported to the Commission.~~provide annual auditable reports to the Commission from the master student registration list.~~

.....

- (5) Each institution must maintain a master student registration list, in table format, consisting of at least the following information for any person who signs an enrollment agreement financially obligating that person or makes a down payment to attend, or both:

- (a) full name of the student;
- (b) complete address;
- (c) telephone number;
- (d) social security number or unique student identification number;
- (e) registration/enrollment date;
- (f) program name;
- (g) status of student (e.g., enrolled, withdrawn, leave of absence, or graduated);
- (h) employment status at time of enrollment; and
- (i) name, address and telephone number of employer at time of enrollment.

- (6) Institutions must maintain the following documentation in each enrolled student's file~~or folder~~ and shall include but not be limited to:

- (a) transferability of credit disclosure statement required by T.C.A. § 49-7-144; an admissions form that provides basic information such as student name, social security number, address, telephone number, program or area of application, projected entrance date, etc., and information relevant for determination that the student meets the minimum entrance requirements of the institution, (see 1540-01-02-.12). This information may be incorporated into the enrollment contract;

.....

- (c) pre-enrollment disclosure statement or checklist as given in these regulations~~(unless incorporated in the enrollment agreement);~~

.....

- (e) an up-to-date educational transcript for each enrollee in a form that permits easy and accurate review by the student, transfer schools, potential employers and authorized state or federal agencies. Transcripts must indicate the name and address of the institution and be signed by an appropriate institutional officer(s), (e.g., registrar, president, dean). The transcript shall be a permanent record of the student's progress and academic performance, which shall include, but not be limited to:

.....

- 13. appropriate signature(s); and

- (f) an exhibit of the institution's enforcement of standards acceptable to the Commission related to attendance, academic satisfactory progress, and proper documentation of any leave of absence (LOA) that may affect progress.

....

Authority: T.C.A. §49-7-2006, 49-7-2016. **Administrative History:** Original rule filed May 15, 1985; effective July 1, 1985. Repeal and new rule filed January 24, 1990; effective May 1, 1990. Amendment filed December 15, 1992; effective March 31, 1993. Repeal and new rule filed June 24, 1998; effective October 28, 1998. Amendments filed June 6, 2008; effective August 20, 2008.

DPSA Comments: The revision to .15(1) is proposed to more accurately describe the requirement given the change in data collection from aggregate data to student-level data. **This revision benefits institutions by clarifying which records an institution must maintain.**

The revision to .15(5) corrects a publication error from the 2008 version of the rules. At that time, the items inserted in this proposal were inadvertently left out of the rules. **This is a housekeeping item.**

The revision to .15(6) adds the transferability of credit disclosure statement and pre-enrollment checklist to the items that must be maintained in a student's file. The former is required to ensure compliance with T.C.A. § 49-7-144 and the latter is required to ensure compliance with the revisions to rule .13. The revision also deletes the language requiring an institution to maintain an admissions form in the student's file. This revision is due to the fact that the information on the admission form is required by .12 to be in the enrollment agreement, which is already required by .15 to be maintained in the student's file. **This is a housekeeping item.**

1540-01-02-.16 PERSONNEL AND INSTRUCTOR QUALIFICATIONS

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(11) Instructors:

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(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:

....

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 one year of practical experience; or

(II) an associate degree not in the subject area but with a minimum of two years of practical experience within the last five years in the subject area to be taught and satisfactory completion in a postsecondary educational institution of nine semester hours or 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 years of practical experience within the last seven 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) Minimum Requirements for Instructors of All Authorized Institutions:

(a) Instructors must provide evidence of education, experience and training as requested by Commission staff ~~higher than the level to be taught.~~

....

~~(15) Agents and Recruiters:~~

~~(a) Institutional agents as defined by the Act and these regulations must submit an application, on forms provided by the Commission have authorization and an agent permit and secure the appropriate bond prior to any solicitation. The applicant must be accompanied by the following:~~

~~1. new applicants must forward recommendations by two 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 1540-1-2-.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 year from the date of issue or termination of employment whichever occurs first.~~

~~(c) 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. Any contract signed by a prospective student as a result of solicitation or enrollment by a non-licensed agent may be null and~~

~~(h) void and unenforceable. 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.~~

~~(i) 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.~~

~~(j) An agent must display the current permit to all prospective students and other interested parties.~~

(4615) Agents and Recruiters:

(a) Institutional agents as defined by the Act and these regulations must submit an application, on forms provided by the Commission, have authorization and an agent

permit and secure the appropriate bond 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 of five thousand dollars (\$5,000) per agent of an out-of-state institution or as specified in 1540-1-2-.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 termination of employment whichever occurs first.
- (c) Agents must have separate permits to represent separate institutions. 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 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.

Authority: T.C.A. §49-7-2002, 49-7-2006, 49-7-2009, 49-7-2011. **Administrative History:** Original rule filed December 15, 1992; effective March 31, 1993. Repeal and new rule filed June 24, 1998; effective October 28, 1998. Amendments filed June 6, 2008; effective August 20, 2008.

DPSA Comments: The language of .16(11) 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. DPSA opines that this was not the intent of the rule. Therefore, DPSA 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 requirement in .16(12) is modified to clearly state that institutions must be able to provide evidence of qualifications as provided for in .16(11). The rule as currently written does not accurately reflect what the qualifications are in .16(11). **This is a housekeeping item.**

Subparagraph .16(15) is deleted. This paragraph should have been deleted in the 2008 publication. Current subparagraph (16) will become (15). **This is a housekeeping item.**

1540-01-02-.18 PROHIBITED ACTS

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- (6) Non-accredited institutions shall not accept funds for tuition and fees prior to ten (10) business days ~~ef~~before the scheduled start date of the class or program.

Authority: T.C.A. §49-7-2006, 49-7-2007, 49-7-2008, 49-7-2013. **Administrative History:** Original rule filed June 15, 1992; effective September 28, 1992. Amendment filed December 15, 1992; effective March 31, 1993. Repeal and new rule filed June 24, 1998; effective October 28, 1998. Amendment filed June 6, 2008; effective August 20, 2008.

DPSA Comments: The first revision to .18(6) is proposed to better reflect the definition of "tuition" in .03(rr). The second revision corrects a typographical error. **This is a housekeeping item.**

1540-01-02-.19 FAIR CONSUMER PRACTICES AND STUDENT COMPLAINTS

- (1) No discounting is allowed. All students must be charged the same price for all programs and classes regardless of their method of payment. Institutions may not discount tuition except that an institution may provide a discount for cash payments provided:
1. 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
 2. the student verifies receipt and understanding of the policy in the pre-enrollment checklist.
- (2) An institution may award a scholarship, tuition waiver or other award provided:
1. the criteria for receiving the award are clearly defined in writing;
 2. the institution has a form and procedure to verify eligibility; and
 3. the amount of the award is a flat dollar amount or subject to calculation using a defined formula or scale.

[re-letter current (2) thru (5)]

- (7) The investigation and further review of complaints will occur in accordance with the following provisions:
- (a) Complaints shall be signed and submitted through hand delivery, mail, electronic mail or facsimile.
 - (b) Commission staff shall investigate all written complaints.
 - (c) Any named institution and/or agent will receive a copy of the complaint and be provided an opportunity to respond to all allegations contained in the complaint.
 - (d) Any named institution and/or agent shall provide all information requested by Commission staff as part of the investigation.
 - (e) As part of the investigation process, Commission staff may work with the complainant and the named institution and/or agent to effectuate a settlement.
 - (f) Following the completion of the investigation, Commission staff shall provide to all parties written findings and conclusions, including any determinations with regard to the complainant's receipt of a refund or other monetary relief or the assessment of a fine or other adverse action. The written findings and conclusions shall contain a date by which an aggrieved party may submit a request for further review by the Executive Director as provided for in Rule 1540-01-02-.02(2)(b). Such date shall not be earlier than ten (10) business days after the date of the findings and conclusions.
 - (g) Any request for review shall be in writing, signed, list each instance where Commission staff erred, and provide a detailed explanation of each error, including, where applicable, 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 timely received.

Authority: T.C.A. §49-7-2006, 49-7-2007, 49-7-2008, 49-7-2013. **Administrative History:** Original rule filed June 24, 1998; effective October 28, 1998. Amendment filed June 6, 2008; effective August 20, 2008.

DPSA Comments: The revision of .19(1) allows institutions to provide cash discounts to students under certain circumstances. The addition of .19(2) allows institutions to issue monetary awards, such as scholarships, under certain circumstances. Neither provision requires pre-approval by DPSA, but institutions are required to provide any necessary documentation if asked by DPSA to establish compliance. DPSA 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.

The addition of .19(7) describes the complaint process. To date, this process has not been described in the rules and the description should help complainants and institutions understand the process.

1540-01-02-.20 ADVERTISING AND SOLICITATION

.....

(3) Institutions authorized by the Commission that have presence, advertise or offer instruction via internet, world wide web or other electronic telecommunication means must state on the first 'page' (as registered with standard web/internet search engines) viewed by the consumer, "[name of school] is authorized for operation as a postsecondary educational institution by the Tennessee Higher Education Commission".

(a) In the case of an internet site, within the required statement given above, "Tennessee Higher Education Commission" must be an electronic link to the agency's web site at < www.tn.gov/thee/ ~~www.state.tn.us/thee~~>.

.....

(7) Institutions that advertise in formats that will be in the public domain for long periods (such as the telephone book directory), where such advertising, if in noncompliance, cannot be rewritten or

— retracted may be fined in accordance with the Act for each day, week or month the advertisement is in active circulation. Such fines shall not exceed \$10,000.

.....

(17) No advertisements of any type shall use the word "wanted," "help wanted," or the word "trainee," either in the headline or the body of the advertisement, nor shall any advertisement indicate in

— any manner that the institution has or knows of jobs or employment of any nature available to prospective students; only "placement assistance," if offered, may be advertised.

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Authority: T.C.A. §49-7-2006, 49-7-2007, 49-7-2008, 49-7-2013. **Administrative History:** Original rule filed June 24, 1998; effective October 28, 1998. Amendments filed June 6, 2008; effective August 20, 2008.

DPSA Comments: The revisions to this rule insert the updated web address for THEC and correct typographical errors in the 2008 version. **This is a housekeeping item.**

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 1.5 million dollars.
- (2) No monies shall be returned if the amount due an institution is less than \$25.00.
- (3) The percentage of the excess due an institution is calculated by determining the percentage of the total of all reauthorization fees paid by the institution during the fiscal year.
- (4) Institutions that did not pay a reauthorization fee during the fiscal year shall not receive any share of the excess.
- (5) 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.

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

DPSA Comments: The addition of .26 is a result of discussions during the 2009 rulemaking proceeding. At that time, institutions complained that the rate increase was excessive. In response, DPSA 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.**