

Agenda Item: I.B.3.

DATE: January 30, 2014

SUBJECT: Rulemaking Proceeding Regarding Rule Chapter 1540-01-02, Authorization and Regulation of Postsecondary Education Institutions and Their Agents

ACTION RECOMMENDED: Recommend Filing a Notice of Rulemaking Hearing

Background Information: On December 6, 2013, DPSA staff sent to all institutions proposed rule revisions. Specifically, the email attachment contained proposed revisions to Rules 1540-01-02-.03, .05, .06, .07, .08, .13, .14, and .16 and proposed a new rule to be numbered 1540-01-02-.26 concerning the return of regulatory fees.

DPSA staff requested that institutions submit comments to the proposed revisions by December 20, 2013. DPSA reviewed the comments and made some additional changes. As a result, attached are proposed revisions for your consideration. The revisions contain changes to Rules 1540-01-02-.03, .05, .07, .08, .11, .13, .14, .16 and .19 and a proposal to add Rule 1540-01-02-.26.

On January 16, 2014, the Committee on Postsecondary Educational Institutions voted unanimously to recommend the rule revisions to you for your consideration for the purpose of filing a Notice of Rulemaking Hearing with the Tennessee Secretary of State. If the Commission so votes, DPSA will prepare a Notice of Rulemaking Hearing containing the revisions included herein and to transmit the notice to the Secretary.

PROPOSED RULE REVISIONS

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:

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(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.

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(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.

...

(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.~~

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1540-01-02-.05

EXEMPTION.

(1) ~~T.C.A. § 49-7-2009 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. § 49-7-2009. 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,~~ to its membership or apprentices or without charge, except that the institution may accept funds provided through a state or federal program that provides adequate institutional and/or programmatic review as determined by the Commission staff; or
3. financed and/or subsidized by public funds, without charge to the students, having a closed enrollment; or
4. given under a contract agreement, having a closed enrollment, at no cost to the student and does not offer ~~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 the entity refrains from any misleading representations. Such representations include:
1. suggesting that the training results in receipt of an educational credential, such as a degree;
 2. listing anticipated salary amounts; and
 3. suggesting that the entity is accredited.
- (f) Eleemosynary institutions, including religious institutions, that:
1. offer instruction or training and do not offer degrees of any type;
 2. do not suggest that postsecondary credit may be awarded by another party or transfer in educational credentials from another source; and
 3. do not offer diplomas/certificates, including those that in the opinion of the Commission replicate letters of designation or degrees.

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

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

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

(a) Institutions that clearly qualify as exemption under the Act ~~and~~ under 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 an 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.

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(6) Bond Requirements for Institutions:

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

1. ten thousand dollars (\$10,000) for in-state institutions, out-of-state public institutions and all institutions providing primarily religious instruction, and
2. twenty thousand dollars (\$20,000) for all other institutions, including out-of-state private institutions.

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

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

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

~~(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.~~

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(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.~~

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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.~~

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~~(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;

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- (r) [the cash discount policy, if offered to students.](#)

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1540-01-02-.13
STANDARDS.

ENROLLMENT AGREEMENTS AND DISCLOSURE

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- (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:

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- (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 \[www.tn.gov/thec\]\(http://www.tn.gov/thec\) 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."~~

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1540-01-02-.14

FINANCIAL STANDARDS.

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(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 i~~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) ~~T~~he 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) ~~R~~elated 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 the 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 supporting instructors meeting the minimum qualifications and shall complete 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.

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(~~11~~12) 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.

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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:

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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.

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(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 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 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.~~

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- (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.

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**1540-01-02-.19
COMPLAINTS.**

FAIR CONSUMER PRACTICES AND STUDENT

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

- (a) the institution has a written policy in the catalog that includes the definition of cash and details the qualifications for receiving and the amount of a cash discount and
- (b) the student verifies receipt and understanding of the policy in the pre-enrollment checklist.

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

- (a) the criteria for receiving the award are clearly defined in writing;
- (b) the institution has a form and procedure to verify eligibility; and
- (c) the amount of the award is a flat dollar amount or subject to calculation using a defined formula or scale.

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

 - (a) No moneys shall be returned if the amount due an institution is less than twenty-five dollars (\$25.00).
 - (b) The percentage of the excess due an institution is calculated by determining the percentage of the total of all reauthorization fees paid by the institution during the fiscal year.
 - (c) Institutions that did not pay a reauthorization fee during the fiscal year shall not receive any share of the excess.
 - (d) Institutions that close or that have had their authorization to operate revoked prior to the end of the fiscal year shall forfeit any share of the excess.
- (2) At the request of an institution a refund will be made as follows:

 - (a) If an institution withdraws a pending application within three (3) working days from receipt or prior to the start of Commission staff's review, then all fees assessed shall be refunded.
 - (b) If an institution withdraws a pending application more than three (3) working days from receipt and once Commission staff review begins, the Commission may retain fifty percent (50%) of the assessed fees.
 - (c) Once Commission staff's review of a pending application is complete or a site visit has been conducted, the Commission may retain one hundred percent (100%) of the assessed fees.
 - (d) Institutions that fail to complete the application process described in Rule 1540-01-02-.07(1)(b) shall forfeit all fees paid.
 - (e) Any other fee collected is nonrefundable once the Commission staff has performed the associated review or work related to that fee.