

**DATE:** April 23, 2009

**SUBJECT:** Consideration of Rule Revisions for Rule 1540-1-2-.25

**ACTION RECOMMENDED:** Approval

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

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

Over the years, the Division of Postsecondary School Authorization (DPSA) accumulated a surplus from the fees collected. DPSA has had to withdraw money from the surplus account in order to cover the budget expenditures in each of the two previous fiscal years and will require funding from the surplus to cover the budget for the current fiscal year. After this fiscal year, the surplus account will not have enough money in it to cover the deficit that will result under the current fee structure and the surplus will be depleted during FY09-10.

The costs associated with the regulatory function set forth in Part 20 of Title 49, Chapter 7 have increased significantly since 1992. The increase is due in part to the addition of five (5) employees to the staff of DPSA through the FY08-09 appropriations bill. However, absent the addition of the five positions, current fees are insufficient to cover the continuing cost of regulation.

Recognizing such, THEC initiated the present rulemaking proceeding through the filing of a Notice of Rulemaking Hearing on January 21, 2009. The rule revisions contained in the notice were crafted with the intention of fully covering the budget of DPSA.

Also on January 21, 2009, DPSA sent all authorized institutions via electronic mail a copy of the Notice of Rulemaking Hearing and provided specific notice

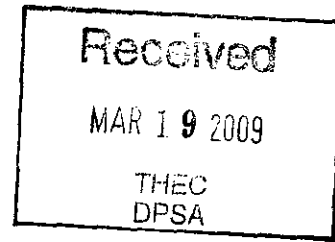
that institutions could file written comments by February 19, 2009 and/or appear at the hearing to provide oral comments. Prior to the rulemaking hearing, four institutions filed written comments. The comments are generally similar and cover the following topics: (1) the increase is too great; (2) timing is inappropriate given the poor economy; (3) the fee increase will result in the loss of small schools; (4) the fee increase will cause institutions to reconsider future investments in Tennessee; (5) fees are not comparable to other Southern states; (6) the increase will create a precedent for significant increases in the future; and (7) THEC indicated that it could absorb the cost of the new staff.

On March 19, 2009, THEC held the rulemaking hearing. Eight (8) speakers representing sixteen (16) instructional locations and two (2) speakers representing two (2) organizations presented comments. Generally, the oral comments raised the same or similar points to the written comments. Electronic copies of all written comments and the transcript of the rulemaking hearing are attached as Attachments 1 and 2.

**Recommendations of the Committee:** On April 2, 2009, the Committee held its regularly scheduled meeting. After discussion of the concerns expressed in the comments, the Committee took two votes. First, the Committee voted (8 ayes, 1 nay, and 1 pass) to modify Paragraph 4 of the rule contained in the January 21, 2009 Notice of Rulemaking Hearing. Specifically, the Committee voted to modify Paragraph (4) such that all institutions will pay .75% of the gross tuition collected subject to a minimum of \$750 and a maximum of \$25,000. A copy of the modified rule that the Committee is recommending for your consideration is attached as Attachment 3.

The second vote concerned responses to the written and oral comments offered during the rulemaking process. Pursuant to Tenn. Code Ann. § 4-5-222, the record of the rulemaking hearing must include responses of the agency to the comments submitted. In order to comply with this statutory requirement, the Committee voted on a set of responses to recommend to the Commission. Those responses are attached as Attachment 4.

**Brian Newman**  
**Director, State Affairs**  
**Career College Association**  
**briann@career.org**



**Tennessee Higher Education Commission**  
**Rulemaking Hearing on Proposed Rule Number 1540-01-02-.25 – FEES**

March 19, 2009  
Nashville, Tennessee

The Career College Association (CCA) is a voluntary membership organization of private postsecondary schools, institutes, colleges and universities that provide career-specific educational programs. CCA has more than 1,500 members – including 36 in Tennessee – that educate and support over one million students each year for employment in over 200 occupational fields. CCA member institutions provide the full range of higher education programs: short-term certificate and diploma programs, two- and four-year associate and baccalaureate degree programs, and masters and doctoral degree programs.

After considering the impact this rule would have on our member institutions and their students, I respectfully submit the following for your consideration.

**1) Annual Licensure Fees in Tennessee would be significantly higher than contiguous states.**

The Career College Association strongly supports reasonable state regulation and appropriate licensure fees to run an efficient regulatory entity. An examination of contiguous states regulatory fees indicates the proposed rule would place Tennessee licensure fees significantly higher than neighboring states. The one possible exception is for a handful of degree granting institutions in North Carolina under the oversight of the University of North Carolina Board of Governors as their annual licensure fees are based on the number of existing degree programs rather than revenue.

The University of North Carolina Board of Governors annual licensure fees range from \$4,000 to a maximum of \$16,000. They also charge a \$1,000 per additional campus or site. This differs from the Tennessee model where each individual campus pays a separate annual fee for authorization based on gross tuition revenue.

Licensure Fees for States Bordering Tennessee

State	Annual Registration or Licensure Fee Maximum	Annual Licensure - \$1 million of gross tuition revenue	Annual Licensure - \$5 million of gross tuition revenue
Alabama	\$2,500 for initial two-year license	\$1,500 for a two-year renewal license	\$1,500 for a two-year renewal license
Arkansas	\$3,030	Annual fee is based on "Highest Tuition" and ranges from \$455 to \$3,030	Annual fee is based on "Highest Tuition" and ranges from \$455 to \$3,030
Georgia	\$25,000	\$2,000	\$5,000
Kentucky	\$2,000	\$2,000	\$2,000
Kentucky (Bachelor Degree Granting)	NA	None – Annual fees are not charged. Institutions pay for site visits to approve programs.	None – Annual fees are not charged. Institutions pay for site visits to approve programs.
Mississippi	\$10,000	\$2,000	\$5,000
Missouri	\$2,500	\$1,000	\$2,500
North Carolina	Annual Renewal fees are \$1,250 + \$50 per program	See annual registration	See annual registration
North Carolina (Bachelor Degree Granting)	Annual fees range from \$4,000 (0 to 5 degrees) to \$16,000 (over 30 degrees) plus \$1,000 per add'l site	See annual registration	See annual registration
Tennessee (current)	None - 8,000 + .0001 of gross tuition over \$4,000,000	\$3,500	\$8,100
Tennessee (proposed)	None - \$65,250 + .001 of gross tuition over \$50,000,000	\$7,500 (+114%)	\$30,750 (+280%)
Virginia	\$6,000 (\$2,500 for an accredited institution)	\$2,500 (accredited institution) or \$6,000 (unaccredited institution)	\$2,500 (accredited institution) or \$6,000 (unaccredited institution)
Florida	\$10,000	Annual fee is based on enrollment and ranges	
South Carolina	\$5,000	\$5,000	\$5,000

**2) THEC should benchmark its regulatory oversight budget with contiguous states and other regulatory entities known for strong oversight of the career college sector.**

When doing so it is important to compare apples with apples as THEC regulates both degree and non-degree granting institutions. A number of states including Kentucky and North Carolina have bifurcated regulatory structures by which Bachelor's degree granting institutions are regulated separately from non-degree granting postsecondary schools.

The Florida Commission for Independent Education licenses 313 degree-granting institutions and 508 non-degree granting institutions in FY 2007-2008. During this period, the agency collected \$2,913,488 in revenue from licensure fees, program fees, agent's fees, and late fees, and expended \$2,591,422. Thus the effective cost per institution for state regulatory oversight is \$3,549.

Georgia's Nonpublic Post Secondary Education Commission authorizes 129 degree-granting institutions and 150 non-degree granting institutions. The agency's FY 2009 budget is \$803,910 making the effective cost per institution for state regulatory oversight \$2,881.

The Missouri Department of Higher Education "certifies" 155 postsecondary institutions with a FY 2009 budget request of \$131,741 for proprietary institution oversight. Thus the effective cost per institution for state regulatory oversight is \$850.

The Arkansas State Board of Private Career Education licenses 254 schools and has a FY 2008-2009 budget of \$373,011 making their effective cost per institution for state regulatory oversight \$1,469.

Finally, we come to Tennessee where THEC authorizes approximately 333 postsecondary institutions. The Commission's FY 2009-2010 budget calls for \$1,586,813 in revenue from licensure fees making the effective cost per licensed institution \$4,765.

This high effective cost per institution begs the following questions:

- Why does it cost Tennessee significant more to regulate postsecondary institutions?
- Can THEC use established best practices and benchmarking to be more efficient?

**3) High licensure fees will discourage future investments in Tennessee by accredited career colleges.**

Tennessee's accredited career colleges conferred 42% of certificates, 26% of associate degrees, 1% of bachelor's degrees, and 2% of master's degrees in 2007-2008. Of all certificate and associate degrees awarded in 2007-2008, Tennessee career colleges provided:

- 85% of communications/communications technologies awards
- 60% of computer/information sciences awards
- 48% of business/management awards
- 46% of health professions awards
- 44% of engineering/engineering technologies awards.

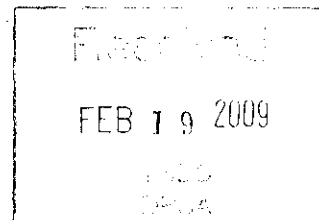
In closing, it is the interest of students and institutions alike for THEC for keep licensure fees as reasonable as possible. I know the Commission is concerned about tuition costs and hope that high licensure fees are not another inflation pressure.

Submitted by:

**Brian Newman**  
**Director, State Affairs**  
**Career College Association**  
**1101 Connecticut Avenue, NW**  
**Suite 900**  
**Washington, DC 20036**  
**Phone: 202-336-6807**

**Julie Woodruff - Rule 1540-01-02.25**

**From:** "Chris Murov" <chris@cumberlandinstitute.com>  
**To:** <Julie.Woodruff@state.tn.us>  
**Date:** 2/19/2009 4:54 PM  
**Subject:** Rule 1540-01-02.25  
**CC:** "Mary McDaniel" <mary@cumberlandinstitute.com>



Dear Ms. Woodruff,

Thank you for the opportunity to submit comments about the Amendments to Tennessee Higher Education Commission Rules before the Rulemaking Hearing on March 19, 2009.

I suspect I am not the only school administrator who is contacting you regarding the steep jump in fees proposed by the new rules. I completely understand the need to raise funds for the Commission, since we are all struggling to meet rising costs with less income. It is, unfortunately, the nature of our economic system right now. What is difficult to budget in these times is the doubling of reauthorization fees at such a difficult time. It would certainly be useful to us if the commission could raise the fees in stages, so we might pass them along to our students through tuition increases more gradually. Most of our students take approximately 2 years to go through our program, and it is generally our intention to raise our tuition bi-annually, so the majority of them do not experience more than one tuition increase during their training here. Many of them are already struggling, and we have tried to absorb the utility increases, book & supply increases, and other rising costs without passing them along each year, but this increase, on top of all the others, would certainly require a response this year.

I would also like to request that with the increased revenue collected by the Commission, there would be immediate action to close some of the massage therapy programs locally which have failed to meet the 75% state massage board pass rates for two years, even if it required a teach-out for students still actively enrolled in those programs. The large corporate entities which run these programs can easily absorb rising fees, but they are providing a sub-standard education to the students enrolled in their programs, making it impossible for the students to become licensed and go to work in our industry after graduation.

When I appeared before the massage board last summer and asked the board why they did not revoke authorization of massage programs which did not meet THEC standards, I was told they would not object to doing so, but Mr. Dick Mansfield had appeared before them previously to ask that they not do so because of the expense it would generate for the state. Needless to say, this made me somewhat cynical about the authorization process. There seems to be one set of rules for the big schools who accept Title 4 funding, and a different set of rules for the rest of us, because the big schools have structured their programs in such a way that a teach-out would almost certainly require their students to start over somewhere else – a costly proposition for the state. This disparity seems particularly troubling as we are now asked to dig deeper into our pockets to fund the commission.

It would be easier to accept the increase costs of paying for regulation and oversight of post-secondary programs, if we could see evidence of the protection of the student consumer and the tax-payers who support Title 4 programs in the actions of the investigative arm of the commission. At the very least, I would hope future regulation might include reform of the structures of post-secondary programs to provide transparency in their curricula with stand-alone courses, which could be transferred to other institutions, and reform to school contracts to provide exit options for disenfranchised students. With these changes, the system could become self-correcting through the power of consumer choice.

Once again, I appreciate the opportunity of being heard on this matter.

*Chris Murov*

Administrative Director  
 Cumberland Institute of Holistic Therapies  
 500 Wilson Pike Circle, Suite 121  
 Brentwood, TN 37027  
 615-370-9794, ext. 10

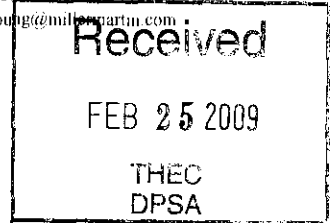


ATTORNEYS AT LAW

COPY

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Amanda Haynes Young  
Direct Dial (615) 744-8524  
Direct Fax (615) 744-8639  
ayoung@millermartin.com



February 23, 2009

Julie M. Woodruff, Esq.  
Director of Regulatory Affairs  
Postsecondary School Authorization  
Tennessee Higher Education Commission  
404 James Robertson Parkway, Suite 1900  
Nashville, TN 37243

RE: Proposed THEC Rules

Dear Ms. Woodruff:

Please accept this letter in opposition to the Tennessee Higher Education Commission's ("THEC") proposed fee increases as set out in the January 2009 Notice of Rulemaking. We are submitting these comments on behalf of Argosy University, The Art Institute of Tennessee-Nashville and Brown Mackie College-Hopkinsville, KY which are owned by Education Management Corporation ("EDMC").

EDMC opposes the fee increase due to the substantial nature of the increase. For the EDMC schools licensed in Tennessee, the fee increase ranges from 214% to 390%. Such a fee increase is drastic.

In addition, the fee increase must be considered in light of last year's legislation regarding proprietary schools which did not have a fiscal note. In fact, there was testimony before several committees that THEC could absorb all costs of implementation of last year's legislation. It appears now, several months after last year's legislation went into effect, that these new rules were proposed to cover the costs of last year's legislative changes.

Finally, such drastic increase does not compare with the license renewal fees of other southern states. In fact, many of the southern states have caps or ceilings for all fees charged limiting the amount that each institution pays if it offers several degrees. The proposed rules do not have a ceiling or cap for possible fees and we are concerned that the sizable increase will create a precedent for similar increases year over year.

EDMC acknowledges that the THEC fees have not been raised in over ten years and that some adjustment may be necessary. However, EDMC questions the need for such a substantial increase in fees, especially in light of assurances made by THEC last legislative term.

Julie M. Woodruff, Esq.  
February 23, 2009  
Page 2

An EDMC representative will appear at the March 19, 2009, rulemaking hearing and would request an opportunity to speak.

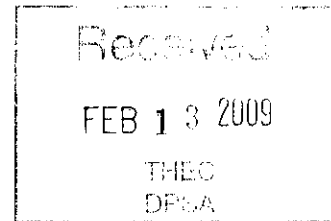
Sincerely,

  
Amanda Haynes Young

clw

cc: Mr. Will Burns, Associate Executive Director,  
Legal and Regulatory Affairs, THEC

Massage Institute of Cleveland  
Education is the Beginning of Success



Feb. 5, 2009

To The TN. Higher Education Commission,

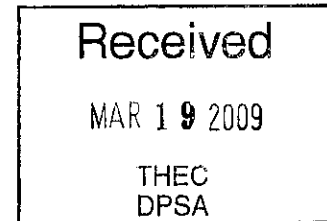
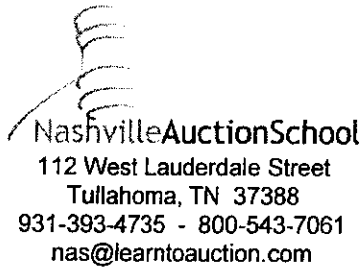
I, in response to the amendment pertaining to the proposed fee increase would like to voice my disapproval.

I think it very ill timed to more than double many of the fees when the economy is against us as well. Smaller schools who have to closely guard every dollar know this more than the larger schools. We are already blocked from funding like the Hope scholarship, and Sallie Mae is not giving out loans unless you have a credit score over 700, and now you are working against us also.

I think that it will not be long for there are only the large chain schools left, whose main concern is bringing in money and not about helping, teaching and caring about how our graduates do and try to give them the best at an affordable cost that will not leave them in debt for years.

I could go on a lot more but I hope you understand and will not penalize us with such a dramatic increase. Thank you for allowing me a minute to state my thoughts,

Michael L Sandberg LNT  
Owner / Director  
Massage Institute of Cleveland



March 19, 2009

Tennessee Higher Education Commission  
Rule Making Hearing  
Rule 1540-01-02-.25 paragraphs 3 and 4

Comments and Position of Nashville Auction School, LLC regarding the above proposed Rules changes:

Nashville Auction School recognizes a fee increase is necessary and imminent and we fully support an equitable fee increase.

By the same token, Nashville Auction School would like to register our objection to the proposed rule changes on the following points and for the following reasons:

With regard to Paragraph 3(b): The Division of Postsecondary School Authorization operate on a **fiscal year**, while Nashville Auction School operates on a **calendar year**. The fiscal year/calendar year difference between our accounting system and the reporting requirements currently cost our institution in additional accounting costs and dedicated administrative staff hours. Additionally, the necessity to provide an independent CPA financial report on parts of two different calendar years' books – with only a portion of those books having been properly closed – is time consuming on our accountant and this process invariable requires us to request a 30-45 day extension on our reauthorization application. Paragraph 3b institutes a "Renewal Extension Fee" in the amount of \$ 500.00 which we feel is punitive.

Paragraph (4) establishes reauthorization fees for institutions based on annual gross tuition revenues according to a scheduled range of revenue increments. While we fully support a fee increase, we adamantly object to the tuition ranges for the following reasons:

- Smaller schools on the lower tier of tuition revenues continue to pay a higher percentage of tuition dollars for their reauthorization than schools generating higher tuition revenues, and
- Schools in the lower end of each tuition range pay a higher percentage of tuition revenue than those at the higher end of the range.

For example: an institution collecting \$ 50,000.00 in tuition will pay **1.5%** of their tuition revenue for reauthorization while that same institution would pay **.75 % (¾ %)** when they reach \$ 100,000; at \$ 100,001.00, their fee is again **1.5%**, decreasing to **.75 % (¾ %)** as they reach the \$ 200,000 threshold; and so on. For Institutions with tuition revenues between \$ 1.00 and 5 million dollars, the fee ranges increase by \$ 750/per \$ 100,000. After 5 million dollars, the fee ranges increase of \$ 750 per \$1,000,000 (one million dollars).

In effect, our school authorization is akin to a license to operate in the state of Tennessee. A licensing fee based on revenue is questionable, and we strongly object to this practice.

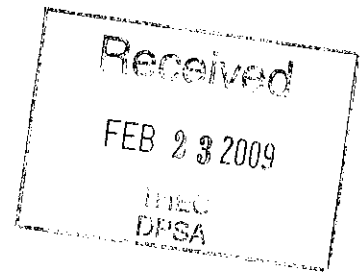
On behalf of Nashville Auction School, LLC, I respectfully request your consideration of an equitable fee structure based on **.75 %** (~~3/4 %~~) for all institutions regardless of tuition revenues and abandon the fee schedule included in paragraph (4). We believe that with an equitable fixed-fee increase, the Division of Post Secondary School Authorization can meet their fiscal goals and still establish an equitable fee structure.


  
3/19/09

# WALDEN UNIVERSITY

February 18, 2009

Julie M. Woodruff, Esq.  
Director of Regulatory Affairs  
Tennessee Higher Education Commission  
Division of Postsecondary School Administration  
404 James Robertson Parkway  
Nashville, TN 37243-0830



Dear Ms.  Woodruff:

In a recent communication from the Tennessee Higher Education Commission, Walden University was informed of a proposed registration fee increase for out-of-state institutions to conduct marketing and recruiting activities in Tennessee. Thank you for this opportunity to comment on the proposed increases, which we feel will cause undue repercussions for Tennessee residents who rely on institutions like Walden University to advance their education.

Such a significant increase in registration fees for out-of-state institutions could result in a number of out-of-state institutions reconsidering the resources they invest in the state – thereby limiting opportunities for your residents.

For example, by calculating the tuition data collected from Walden's last application (2008) and comparing it to the proposed formula, Walden's registration fee would increase from \$8,000 to \$32,000. This would amount to an increase of 400% from the previous year. From our understanding, the fee increase would become effective for the upcoming academic year.

As a nation we are witnessing the worst economic times in decades. As we have seen in past recessions, individuals take advantage of these times to advance their education. For many working professionals, the only opportunity they have to retool themselves for the future rests with institutions like Walden, who can provide flexible and rigorous degree programs. Walden provides students the opportunity to transform themselves as scholar practitioners so that they may transform society – part of our social change mission.

Walden makes every attempt to control increases in tuition. In fact, over the past three years, Walden's tuition has increased an average of only 5% per year. According to data collected by the College Board and the U.S. Bureau of Labor and Statistics, the average increase in tuition nationally was approximately 6% per year. For comparison, the average annual rate of inflation in the United States is between 3-4%.

Walden was granted approval to recruit and market degree programs inside Tennessee in 2005. Since then, we have maintained a collaborative relationship with the state and have continued to offer new programs to Tennessee residents. We welcome the opportunity to continue to help the state meet its higher education goals, particularly in increasing the

enrollment of students over the age of 25 and the number of residents with graduate degrees.

In response to Tennessee's proposal to increase its registration fee structure, we would like to discuss a number of possible options like revising the formula to cap fees at a reasonable level or phasing in the fee increase over the course of several years. Our concern would be that this sudden increase in fees would force Walden to consider dropping already approved programs, and reconsider seeking approval for additional programs that are of great interest to residents of Tennessee. We welcome any opportunity to discuss with the state ways to prevent a sudden increase in fees that could limit residents the ability to attain the education needed to advance in their careers and further contribute to the state's economy.

Sincerely,

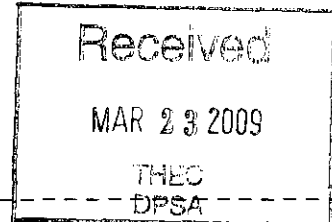


Dr. John A. Sabatini, Jr.  
Divisional Vice President  
Institutional Oversight and Academic Integrity  
Laureate Higher Education Group/ Walden University

BEFORE THE TENNESSEE HIGHER EDUCATION COMMISSION

COPY

RULEMAKING HEARING, RULE )  
1540-1-2-.25 FOR )  
POSTSECONDARY EDUCATIONAL )  
INSTITUTIONS AND THEIR )  
AGENTS )



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TRANSCRIPT OF PROCEEDINGS

Thursday, March 19, 2009  
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APPEARANCES:

For Tennessee Higher  
Education Commission: Ms. Katie Winchester  
Mr. Jack Murrah  
Mr. Tre Hargett  
Mr. David H. Lillard, Jr.  
Mr. Robert White  
Ms. Carolyn Morrison  
Mr. Cato Johnson  
Mr. Gary Nixon  
Ms. Jessica Brumett

For DPSA: Ms. Lovella Carter  
Ms. Julie woodruff

For ITT Technical: Mr. Jim Coakley

For Crown College: Mr. Tim Tomlinson

Reported By:  
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APPEARANCES (continued):

For Nashville Auction  
School: Ms. Rhessa Orr

For Brown Mackie, Argosy  
& Art Institute: Mr. Tony Guida

For Professional  
Bartending School: Mr. David Edwards

For TAICS: Ms. Anne Landis Williams

For National College of  
Business & Technology: Mr. Steve Cotton

For Career College  
Association: Mr. Brian Newman

For Chattanooga College  
of Medical, Dental &  
Technology: Mr. Bill Faour

For University of  
Phoenix: Mr. Ryan Ball

1                   (The aforementioned cause came on to  
2 be heard on Thursday, March 19, 2009, beginning at  
3 approximately 10 a.m., before the Tennessee Higher  
4 Education Commission, when the following proceedings  
5 were had, to-wit:)

6  
7                   CHAIRWOMAN WINCHESTER: I would call  
8 the meeting to order and ask Mrs. Carter if she would  
9 call the roll.

10                   MS. CARTER: Ms. Atkinson.

11                                   (No response.)

12                   MS. CARTER: Ms. Brumett.

13                   MS. BRUMETT: Here.

14                   MS. CARTER: Mr. Hargett.

15                   MR. HARGETT: Here.

16                   MS. CARTER: Mr. Holt.

17                                   (No response.)

18                   MS. CARTER: Mr. Isaacs.

19                                   (No response.)

20                   MS. CARTER: Mr. Johnson.

21                   MR. JOHNSON: Here.

22                   MS. CARTER: Mr. Lillard.

23                   MR. LILLARD: Here.

24                   MS. CARTER: Mr. Mann.

25                                   (No response.)

1 MS. CARTER: Ms. Morrison.

2 MS. MORRISON: Here.

3 MS. CARTER: Mr. Murrah.

4 MR. MURRAH: Here.

5 MS. CARTER: Dr. Nixon.

6 DR. NIXON: Here.

7 MS. CARTER: Mayor Wharton.

8 (No response.)

9 MS. CARTER: Mr. White.

10 MR. WHITE: Here.

11 MS. CARTER: Mr. Wilson.

12 (No response.)

13 MS. CARTER: Ms. Winchester.

14 CHAIRWOMAN WINCHESTER: Here.

15 MS. CARTER: Madam Chair, we have a  
16 quorum.

17 CHAIRWOMAN WINCHESTER: Thank you. I  
18 would like to say welcome to each of you who have made  
19 the choice to attend our meeting this morning. I would  
20 remind you that this is a called meeting and that the  
21 agenda for the meeting is limited to the items that are  
22 listed in the call. At this time, I will turn the  
23 meeting over to Dr. Rhoda for his opening remarks.

24 DR. RHODA: Thank you, Madam Chair,  
25 members of the commission. Good morning and welcome as

1 well. We are very glad that all of the commission  
2 members are here. And our guests -- I'd like to  
3 recognize Dr. Jan Simek who is with us. Dr. Simek is  
4 the new interim president of The University of  
5 Tennessee. We're very glad you're with us this  
6 morning.

7 DR. SIMEK: Thank you.

8 DR. RHODA: And also the vice-chair  
9 of the UT Board of Trust, Jim Murphy, and the  
10 vice-chair of the Board of Regents, Bob Thomas. Thank  
11 you also for being with us and all of our other special  
12 guests.

13 Just a little bit of context about  
14 the follow-up on Mrs. Winchester's remarks about the  
15 call for the meeting. The first part of the meeting  
16 will be a rulemaking hearing, and we will hear more  
17 about the protocol for that. But that's very limited  
18 and very narrow in terms of the scope of the hearing.  
19 It involves the proprietary schools and the for-profit  
20 schools. And just as a matter of introduction also,  
21 there are two members of the advisory committee that  
22 work with the THEC staff, Dr. Chase in particular, but  
23 Dr. Kittie Myatt with Argosy and Mr. Bill Faour from  
24 the Chattanooga College of Medical, Dental &  
25 Technology. So they are with us, and we appreciate

1 your being with us.

2 After the hearing we will take a  
3 short break and then go into what, in essence, is a  
4 work session. All -- there are three items that will  
5 be all for information, just for discussion to bring  
6 commission members and staff current. The first is an  
7 initiative that we are very proud to be partnered with  
8 the department of education, the state department of  
9 education on how to increase the number of math and  
10 science teachers in the state. We certainly appreciate  
11 the University of Tennessee and the Board of Regents  
12 working with us as well. That is for information.

13 Then we'll have a discussion about  
14 the current budget circumstance, economic condition of  
15 the state, what we anticipate will be the outlook. We  
16 will hear more, of course, Monday from the governor,  
17 but budget -- the budget reductions relative to higher  
18 education as well as where we are in thinking about the  
19 economic stimulus package and what that may mean for  
20 higher education.

21 And then the last item will be an  
22 open discussion about the review that's underway or  
23 will be underway relative to the governing structure of  
24 higher education in the state, and we'll talk more  
25 about that. But all of these items are for discussion

1 only. And we'll plan to adjourn around noon. So,  
2 Madam Chair, those are my remarks.

3 CHAIRWOMAN WINCHESTER: Thank you,  
4 Dr. Rhoda. At this time, we will convene the  
5 rulemaking hearing, and I'll call on Ms. Woodruff to  
6 introduce the hearing.

7 MS. WOODRUFF: Thank you, Madam  
8 Chair, commissioners. On January 19, 2009, the  
9 commission filed with the Tennessee Secretary of State  
10 a notice of rulemaking hearing. Pursuant to this  
11 notice, the commission seeks to amend  
12 Rule 1540-1-2-.25. This rule lists the fees paid by  
13 postsecondary educational institutions subject to the  
14 provisions of Title 49, Chapter 7, Part 20 and the  
15 rules promulgated pursuant thereto.

16 The primary difference between the  
17 current rule and the proposed rule is that the fees in  
18 the proposed rule are higher than those in the current  
19 rule. Specifically as to the set fees for specific  
20 filings such as an application for initial  
21 authorization, the fees are increased, additional  
22 detail is provided, and specific items are added.

23 Also, the incremental fee for the  
24 annual reauthorization is increased to \$750 for each  
25 \$100,000 of gross tuition collected up to \$4 million.

1 Thereafter the \$750 increment applies to each  
2 additional \$1 million of gross tuition collected.

3 The facts underlying the increases  
4 listed in the proposed rule are simple. The revenue  
5 generated from current fees is insufficient to cover  
6 the costs of regulation contemplated by Title 49,  
7 Chapter 7, Part 20. The commission has explicit  
8 authority to collect revenues sufficient to cover the  
9 costs of regulation. The proposed rule intends to do  
10 that and nothing more.

11 Prior to the start of this meeting, I  
12 asked those that wished to comment to sign in. At this  
13 time, there are eleven names on the list. Given this  
14 number, I recommend that the chair limit the time for  
15 comments to five minutes per person. Thank you.

16 CHAIRWOMAN WINCHESTER: Thank you,  
17 Ms. Woodruff.

18 In order to ensure that all persons  
19 are able to comment today and to avoid any undue  
20 repetition, I will limit the length of comments as  
21 recommended by Ms. Woodruff. Also, we have a court  
22 reporter present here today to transcribe the hearing;  
23 therefore, I ask that you speak clearly; begin your  
24 comments by introducing yourself. And stating the  
25 institution with which you are affiliated. We will now

1 begin with the first person on the list. Dr. Rhoda.

2 DR. RHODA: Okay. I have the list  
3 here of those who signed in, so here with we go. The  
4 first speaker will be Mr. Jim Coakley with ITT  
5 Technical followed by Mr. Tim Tomlinson from Crown  
6 College followed by Rhessa Orr from Nashville Auction  
7 School.

8 MR. COAKLEY: I'm Jim Coakley. would  
9 you like me to go --

10 DR. RHODA: Yes.

11 THE WITNESS: Thank you and good  
12 morning, ladies and gentlemen. I'm Jim Coakley. I'm  
13 with ITT Technical Institute here in Nashville. And I  
14 am representing the four colleges that are here in the  
15 Tennessee area -- in Tennessee.

16 what I would like to point out is by  
17 the -- from the example of a local guy here dealing  
18 with the school, the reauthorization levels that ITT  
19 paid from my location in 2007 and in 2008 were right in  
20 the 8900 to 9,000 dollar range. And with the proposed  
21 increase, that level for my campus goes up to \$37,500.  
22 That actually represents a level increase of \$317,000.  
23 I believe that the increase is unreasonable and  
24 inappropriate, and I would just ask the commission to  
25 reconsider. while I certainly understand an increase

1 proposed -- increase is due, I think the proposal  
2 levels are a bit high.

3 Commensurately our Knoxville campus  
4 increase would be 320 percent for the reauthorization  
5 charge, and our campus in Memphis would incur a  
6 312 percent increase on that same fee. Thank you.

7 DR. RHODA: Okay. Mr. Tomlinson.

8 MR. TOMLINSON: Hello. Thank you for  
9 the opportunity to speak. I'm Tim Tomlinson. I  
10 represent Crown College of the Bible; we're just  
11 outside of Knoxville, Tennessee, in East Tennessee.

12 A few of our concerns -- in fact our  
13 main concern is with the substantial increase in the  
14 reauthorization fee. If the changes that are proposed  
15 are made, our fee would nearly triple this year. And  
16 in light of that, we have three concerns. Number one,  
17 we would ask the commission to please take into  
18 consideration the toll of the economic crisis that  
19 we're facing right now. I think we all feel that the  
20 field of education is something that we should all try  
21 to keep as secure as possible during these times. Many  
22 schools that we know of are being very innovative and  
23 working very hard to cut costs. We are freezing our  
24 tuition for next fall. We're raising additional  
25 funding. We're also trimming wastes in every way that

1 we can. And so we would just ask that the commission  
2 please share that concern in every way that they can  
3 because we understand that any rate hikes will in the  
4 end be passed on to the burden of the students.

5           Number 2, we would ask for the  
6 commission to consider that if such a substantial  
7 reauthorization fee increase is necessary that the  
8 commission would consider implementing it on a periodic  
9 basis, perhaps on a three-year schedule. Due to the  
10 nature of the increase, again, our fee would increase  
11 nearly 200 percent this year if the proposed plan is  
12 enacted.

13           And then, thirdly, we would like to  
14 ask that if such an increase is enacted, we would like  
15 to know if there would be any additional services  
16 provided by the commission for our schools or if any  
17 current services will be or have been enhanced. And  
18 that these funds would -- basically, we would like to  
19 know if they're going to provide any more services from  
20 the commission to the schools.

21           Again, thank you for the opportunity  
22 to speak.

23           DR. RHODA: Thank you. Rhessa Orr,  
24 followed by Tony Guida with Brown Mackie, Argosy, and  
25 Art Institute and David Edwards.

1 MS. CARTER: My name is Rhessa Orr,  
2 and I'm representing Nashville Auction School, LLC, in  
3 Tullahoma, Tennessee.

4 Nashville Auction School recognizes  
5 that a fee increase is imminent and necessary, and we  
6 fully support an equitable fee increase in the division  
7 of postsecondary schools. That being said, I would  
8 like to voice our concerns and our objections on a  
9 couple of key points. With reference to  
10 Paragraph 3(b), the division of postsecondary school  
11 authorization. Tennessee Higher Education Commission  
12 and the State of Tennessee operate on a fiscal calendar  
13 year. Nashville Auction School operates on a regular  
14 calendar year. And on a reauthorization application  
15 and packages, what we as a small institution are faced  
16 with is additional costs for accounting on two  
17 different financial years. So the reauthorization  
18 application covers two sets of books for us. One set  
19 that has been officially closed, and one set of books  
20 that is still operating. This increases our accounting  
21 costs and our administrative staff costs.

22 And invariably because of the burden  
23 on our accountant's office for the CPA review, we are  
24 in a position of having to request a 30- to 45-day  
25 extension. And this has been over the last, I think,

1 three years in order to complete that application.  
2 Paragraph 3(b) institutes a new fee for an extension  
3 request of \$500 which in our situation we feel to be  
4 punitive, and we would request this commission review  
5 that fee.

6 The second point regarding  
7 Paragraph 4 of the proposed rule change establishes  
8 reauthorization fees for institutions based on annual  
9 gross tuition revenues according to the scheduled range  
10 of revenue increments. While we support this increase,  
11 we adamantly object to the tuition ranges for the  
12 following reasons: smaller schools, which we are, on  
13 the lower tier of tuition revenues continue to pay a  
14 higher percentage of their tuition dollars for their  
15 reauthorization than schools generating higher tuition  
16 revenues. And schools in the lower end of each tuition  
17 range pay a higher percentage of tuition revenues than  
18 those in the higher end of the range. For example, an  
19 institution with \$50,000 in tuition revenues is paying  
20 1.5 percent of their tuition dollars towards their  
21 reauthorization. As that institution approaches  
22 \$100,000, they are paying three-fourths of a percent of  
23 their tuition revenues towards reauthorization. When  
24 that same tuition generates \$101,000, their percentage  
25 goes back to one and a half percent. As they approach

1 200,000, it goes back to three-fourths of a percent and  
2 so on up to \$4 million.

3 The increment as was stated earlier  
4 by Ms. Woodruff does run \$750 per \$100,000 of tuition  
5 up to 4 million. And then over \$4 million, \$750,000  
6 per \$1 million in tuition revenues. So an institution  
7 which is bringing in excess of \$4 million is paying a  
8 disproportionately lower share of their tuition  
9 revenues than a smaller institution. And as a smaller  
10 institution, we have increased costs to produce the  
11 work.

12 In an effect, this reauthorization  
13 fee serves as a licensing fee to operate in the State  
14 of Tennessee, and we are concerned that a licensing fee  
15 that is based on revenues is questionable. And we  
16 would like to ask this commission on behalf of  
17 Nashville Auction School, LLC, and a small school in  
18 this division, to please consider an equitable fee  
19 range that is a fixed fee of three-quarters of a  
20 percent regardless of institution, regardless of  
21 tuition dollars. Thank you very much.

22 DR. RHODA: Thank you. Mr. Guida and  
23 then David Edwards and Regina Marino.

24 MR. GUIDA: Madam Chair and members  
25 of the commission, thank you for giving me the

1 opportunity today to present our views on the proposed  
2 fee increase. My name is Tony Guida. I'm with  
3 Education Management Corporation. We own 89 colleges  
4 and universities across the country. We're licensed in  
5 28 states. In my role as the senior vice president of  
6 regulatory affairs, I oversee both accreditation and  
7 licensing, state licensing for our institutions. I am  
8 here today representing Argosy University in Nashville,  
9 our Art Institute of Nashville, Tennessee; those are  
10 the two on ground campuses that we have here. We also  
11 have Brown Mackie College, Hopkinsville which is an  
12 out-of-state institution which is still regulated by  
13 THEC.

14 We -- we understand that the fees are  
15 needed in order to properly regulate institutions in  
16 the State of Tennessee. Our objection, I think like  
17 others, is the amount of the increase and the impact  
18 that it has on certain schools as opposed to others.  
19 For instance, the fees for our Art Institute of  
20 Tennessee under the proposed rules would go from \$8,257  
21 to 32,250, which is a 390 percent increase. For Argosy  
22 in Tennessee, it would go from 7600 to 28,500, which is  
23 a 375 percent increase.

24 We, as an institution or group of  
25 institutions, as I said, do not oppose fees. In fact,

1 we actually have supported in the State of Illinois  
2 what's been referred to as a fee for service  
3 legislation which is to actually implement fees where  
4 they weren't currently being required for new program  
5 applications so that the fees would allow the Illinois  
6 Board of Higher Education to hire staff to process  
7 things. so for us, it's more the dollar amount of the  
8 fees and really an equitable distribution of the way  
9 the fees are going to be implemented.

10 I would propose that, as was  
11 mentioned earlier, that perhaps revenue isn't really  
12 the only thing you need to look at. If revenue is  
13 going to be used I think, as other states have done, it  
14 should be capped, but also you really can't look at  
15 percent of revenue in and of itself. I think one of  
16 the other things you need to look at is the amount of  
17 work that is required. If a small school requires the  
18 same review or smaller schools require the same review  
19 that the larger schools do as far as their submissions  
20 are concerned and the same type of an audit, you need  
21 to consider that as well in determining what is the  
22 equitable way to distribute fees among the  
23 institutions. Thank you.

24 DR. RHODA: Mr. Edwards.

25 MR. EDWARDS: I didn't realize I

1 would be standing up front or I would have worn a  
2 jacket, so forgive me. I'm David Edwards from  
3 Professional Bartending School of Nashville and Regina  
4 Marino from the Knoxville campus; I'm going to say a  
5 few words for her.

6 As others have stated, I understand  
7 and support a fee increase for THEC, but I would like  
8 to, as a smaller school, propose a -- more of a gradual  
9 increase instead of one major increase. Due to the  
10 economy, it seems it would be better to maybe increase  
11 it over a three-year period and kind of let us move  
12 into that. We've lowered our tuition over the last few  
13 years due to the economy and also salaries have not  
14 increased at our campus for anyone. Unlike AIG we're  
15 not getting bonuses this year. And so I just feel like  
16 it's about a 75 percent increase for our school in one  
17 year. And that mixed with some different financial  
18 reports they want from us now, it's just going to  
19 increase our -- 5 or 6,000 more dollars this year for  
20 our school, and that's just going to hurt a lot.

21 So anyway that's -- I believe what  
22 you guys do. You need staff. You need to be able to  
23 monitor schools and -- but, hopefully, we can gradually  
24 increase this so we don't have a major shock here in  
25 August or October or whenever it's due. Thank you.

1 DR. RHODA: Thank you. And those  
2 comments were also on behalf of Regina?

3 MR. EDWARDS: Regina.

4 DR. RHODA: Regina. Okay. Thank  
5 you. Okay. Anne Landis Williams, Steve Cotton, and  
6 Brian Newman.

7 MS. LANDIS WILLIAMS: Good morning  
8 and thank you for the opportunity to speak today. I am  
9 Anne Landis Williams, and I am the executive director  
10 of the Tennessee Association of Independent Colleges  
11 and Schools, TAICS.

12 And TAICS is aware of the annual  
13 reauthorization fee, and its member schools expect to  
14 pay yearly. And we have recently become aware of the  
15 proposed fee increase resulting in 114, 232, 280, and  
16 up to 400 percent annual increases for our schools.  
17 The proposed fee increase came as a complete surprise  
18 to TAICS and all member schools. The increase is  
19 neither routine nor incremental. We are not opposed to  
20 an increase at a reasonable rate, and we expect to pay  
21 to operate in the state, and our member schools have  
22 had a good relationship with THEC in the past. We  
23 understand there has not been a fee increase in the  
24 past 15 years. However, we are looking for a fair  
25 increase in fees. I reiterate that we are not opposed

1 to an increase at a reasonable rate, but we think that  
2 the proposed fees are exorbitant.

3 At all appearances the fee increase  
4 seems to be punitive rather than constructive. The  
5 first reason for this is the arbitrary nature of the  
6 proposed fee increase. It does not appear to correlate  
7 to increased regulation and enforcement costs for our  
8 sector. Also compared to other states, this proposed  
9 increase is extremely high. Up to this point,  
10 Tennessee has been in line with other states regarding  
11 annual licensure fees. For example, for a school with  
12 an annual licensure at 3 million in revenue fees are as  
13 follows: Kentucky, 2000. Alabama, 1500. Mississippi,  
14 3,000. Missouri, 2500. Arkansas up to 3,030. And  
15 Georgia 3,000.

16 Under the proposed fee increase the  
17 annual licensure fee for a Tennessee school at  
18 3 million would rise 232 percent from 6,780 to 22,500.  
19 Following that same trend, fees would rise by 280  
20 percent for a Tennessee school with 5 million in  
21 licensure.

22 we would like to know how the  
23 proposed increase reflects the additional cost of  
24 oversight for our sector. This fee increase places a  
25 larger burden on Tennesseans versus other states. By

1 all appearances, this is not a reasonable rate of  
2 increase. We are a sector that has a \$330 million  
3 impact on the state of Tennessee, and the value of our  
4 schools is significant. Per an economic study in 2007,  
5 we create over 4,200 jobs and contribute to state and  
6 local government by generating more than 10 million in  
7 state and local taxes. Our job is to serve our  
8 students who then graduate to take jobs and stay in  
9 local communities.

10 We believe that there are too many  
11 unanswered questions and that this requires further  
12 thought and information before enacting any fee  
13 increases. We would like to know how the proposed  
14 increase reflects the additional cost of oversight by  
15 THEC. From a previous proprietary study committee  
16 meeting on January 28, we learned of a proposed five  
17 additional staff to THEC. We do not understand how  
18 these additions would require fee increases of 114,  
19 123, 280, and 400 percent. Again, we are not opposed  
20 to an increase at a reasonable rate. At this point, we  
21 believe there are too many unanswered questions and  
22 that this requires further thought and information  
23 before enacting any fee increase. Thank you.

24 DR. RHODA: Thank you. Mr. Cotton  
25 and then Mr. Newman, Mr. Faour, and Mr. Ball.

1 Mr. Cotton.

2 MR. COTTON: Madam Chair, members of  
3 the commission, thank you for the opportunity to speak  
4 this morning. My name is Steve Cotton, and I'm vice  
5 president and general counsel for National College of  
6 Business & Technology.

7 National College of Business &  
8 Technology offers diplomas and associates degrees at  
9 six campus locations in Tennessee. In addition,  
10 National has 19 other campuses in Virginia, Kentucky,  
11 Ohio, Indiana and has been delivering career education  
12 since 1886. During our last reporting year, more than  
13 2700 citizens of Tennessee received career education at  
14 our campuses in Tennessee.

15 We are concerned about the size,  
16 timing, effect, and the underlying rationale for the  
17 fee increase as proposed in the notice we received  
18 January 21st of this year. We recognize that a number  
19 of comments have already been made in writing; many are  
20 being made before you here today; and we join in  
21 comments to the effect that this proposed fee increase  
22 is inappropriate due to its excessive size, doubling to  
23 more than quadrupling the fees of some of our campuses.  
24 These increases ultimately will be absorbed by students  
25 in a time of economic challenge and increased need in

1 many of our communities. We agree that the increases  
2 may diminish educational opportunities for citizens of  
3 Tennessee by creating an atmosphere where small schools  
4 cannot succeed, and all career schools may reconsider  
5 making additional investments in the state particularly  
6 when fees are so out of step with the fees in other  
7 states. But rather than simply restating these valid  
8 concerns, I would like to focus my brief comments on  
9 the importance of examining the necessity for these fee  
10 increases.

11                   Neither National College nor any  
12 other career institution that we're aware of questions  
13 the value of adequate oversight on the state level.  
14 Just as oversight by accrediting bodies, the federal  
15 department of education, guaranty agencies, and others  
16 helps ensure that the education provided to students by  
17 all colleges and universities including career colleges  
18 is appropriate to the student, oversight by Tennessee  
19 should be designed to help ensure the delivery of the  
20 best quality education possible to Tennessee citizens.

21                   We also recognize that regulation  
22 comes with a cost, and we accept that in Tennessee, as  
23 in other states, we are asked to pay fees to support  
24 the cost of regulation. The question today, however,  
25 is why effective regulation in Tennessee requires fee

1 increases of such huge proportions? At National's  
2 campuses alone, the proposed fee schedule will result  
3 in fee increases up to almost 400 percent. At one  
4 campus from about \$7,000 annually to over \$26,000  
5 annually. At another from approximately 7,000 to over  
6 21,000 annually. The smallest increase at any campus  
7 is to double the fees. What will the additional  
8 proposed revenue pay for? Why are the additional  
9 expenditures supported by the increased revenue  
10 necessary?

11 We understand that these increased  
12 revenues are to be used in large part to support  
13 additional staff; some of whom may already have been  
14 hired. We understand that the fee increases will  
15 support approximately a 50 percent increase in staff.  
16 Review of the fiscal 2007-2008 budget for the division  
17 of postsecondary school authorization compared to the  
18 projected FY 2008-2009 budget reveals that the budget  
19 increase of 50 percent is almost entirely a function of  
20 increased staff. What happened that so precipitously  
21 created the perceived need for a 50 percent increase in  
22 staffing, a 50 percent increase in budget, and up to a  
23 400 percent increase in fees?

24 As I mentioned before, National  
25 College operates in five states. And although

1 Tennessee has a robust set of regulations, they have  
2 not become so much more complex in the last year that  
3 they require 50 percent more staff to implement. Nor  
4 are we aware of any increase in compliance or other  
5 problems which justifies such an increase. In fact, we  
6 believe DPSA staff has been effective at its then  
7 current levels over all of the years that we've been in  
8 Tennessee. We may not have agreed with every  
9 interpretation of every regulation, but the staff we  
10 have worked with has been diligent and effective in  
11 enforcing regulatory compliance.

12 By way of comparison, National  
13 operates campuses in Ohio, a state with roughly the  
14 same number of schools being regulated and until  
15 recently a staff of approximately the same size.  
16 Ohio's budget for regulation of postsecondary schools  
17 is less than \$500,000 as opposed to the \$1.6 million  
18 proposed to be spent by DPSA. And Ohio has a staff  
19 that is 50 percent smaller than the DPSA staff.

20 why does Tennessee need so much more  
21 staff and resources to regulate its schools? Honestly,  
22 I can't think of a reason. I'm unaware of any evidence  
23 of systematic or large scale institutional  
24 noncompliance or abuse in Tennessee that might  
25 conceivably justify such an increase.

1                   As I noted before, over the years  
2 that we've operated in Tennessee, DPSA has effectively  
3 enforced the regulations within its prior budget and  
4 its prior staffing levels. Having said that, although  
5 I haven't seen any evidence that DPSA has been  
6 ineffective in the exercise of its oversight  
7 responsibilities, if there are perceived deficiencies  
8 in DPSA, are there alternative solutions which do not  
9 involve such a dramatic increase? Higher education  
10 regulation has traditionally been considered to be a  
11 partnership between federal, state, and accrediting  
12 agency partners, and this partnership works in state  
13 after state after state. And I am confident that  
14 alternative solutions, taking advantage of the  
15 efficiencies that could be realized by not duplicating  
16 the efforts of the federal department of education and  
17 the accreditors it recognizes, could solve any  
18 perceived regulatory deficiencies within DPSA without  
19 excessive additional expenditures.

20                   This fee increase, excessive for any  
21 number of reasons, is principally excessive because it  
22 is driven by a false premise that Tennessee for some  
23 reason needs to increase regulatory expenditures by 50  
24 percent this year. There is just no valid  
25 justification for these increases. Particularly when

1 their effects must inevitably trickle down to the very  
2 students THEC and DPSA intends to protect. Effects  
3 ranging from increased costs to the students to  
4 decreased choice in education.

5           So in considering these fee  
6 increases, I encourage you to ask what increased  
7 expenditures are these fees going to support? why are  
8 those additional expenditures necessary? Are there any  
9 real problems that are addressed by the additional  
10 expenditures that are driving these fee increases? I  
11 don't think there are, but if you're satisfied that  
12 there are problems that DPSA has not adequately  
13 addressed, have alternative solutions to those problems  
14 been explored? And what are the potential cost savings  
15 associated with those alternative solutions? what  
16 strategies do other states employ that allow them to  
17 effectively regulate career schools and colleges at  
18 substantially lower costs? Is it our obligation to the  
19 citizens of Tennessee not only to effectively regulate  
20 career schools and colleges but also to do so in as  
21 efficient a manner as possible?

22           National College of Business &  
23 Technology is confident that DPSA can responsibly  
24 regulate the colleges and schools under its  
25 jurisdiction within a reasonable budget and a fee

1 structure which if not maintained at its current level  
2 is increased modestly and incrementally and is not  
3 driven to extreme levels by increases in staff or  
4 activities that are not only unnecessary but are, in  
5 fact, harmful to the very students the agency intends  
6 to protect. We encourage you to insist that they do  
7 so. If there is a way in which National College can  
8 assist or participate in a constructive process to  
9 explore or to develop alternatives, we would be glad to  
10 do so. Thank you.

11 DR. RHODA: Okay. Mr. Newman,  
12 Mr. Faour, and Mr. Ball.

13 MR. NEWMAN: Good morning. My name  
14 is Brian Newman. I am director of state affairs with  
15 the Career College Association. The Career College  
16 Association is a national association of accredited  
17 career schools and colleges from across the country.  
18 We have 1500 members nationally including 36 in the  
19 state of Tennessee.

20 After considering the rule and the  
21 impact on our member institutions, I would like to  
22 offer the following comments for the commission's  
23 consideration. First, annual licensure fees in  
24 Tennessee would be significantly higher than those in  
25 contiguous states. The Career College Association

1 strongly supports reasonable state regulation and the  
2 appropriate licensure fees that correspond to run an  
3 efficient regulatory entity. An examination of  
4 contiguous state regulatory fees indicate that the  
5 proposed rule would place Tennessee licensure fees  
6 significantly higher than neighboring states. Rather  
7 than repeating some of the comments that Ms. Williams  
8 offered, I would like to supply additional information  
9 for the record on licensure fees.

10 I also would like to talk a little  
11 bit about benchmarking THEC's regulatory oversight  
12 budget with contiguous states and other regulatory  
13 entities known for strong oversight of the career  
14 college sector. When doing so, it's important to  
15 compare apples with apples as THEC regulates both  
16 degree and nondegree granting institutions. A few  
17 examples: The Florida Commission for Independent  
18 Education licenses 313 degree-granting institutions and  
19 508 nondegree-granting institutions. During the fiscal  
20 2007-2008 year, the agency collected \$2.9 million in  
21 revenue from licensure fees, program fees, agent fees  
22 and license -- agent fees and late fees and expended  
23 nearly \$2.6 million. Thus, the effective cost per  
24 institution for state regulatory oversight is \$3,549.

25 Georgia's Nonpublic Postsecondary

1 Education Commission authorizes 129 degree-granting  
2 institutions and 150 nondegree-granting institutions.  
3 The agency's fiscal 2009 budget is just over \$800,000  
4 making the effective cost per institution for state  
5 regulatory oversight \$2,881.

6 The Missouri Department of Higher  
7 Education certifies 155 postsecondary educations with a  
8 fiscal year 2009 budget of less than \$132,000 for  
9 proprietary institution oversight. Thus, the effective  
10 cost per institution for state regulatory oversight is  
11 \$850.

12 The Arkansas State Board of Private  
13 Career Education licenses 254 schools and has a fiscal  
14 year 2008-2009 budget of \$373,000 making their  
15 effective cost per institution for state regulatory  
16 oversight \$1,469.

17 Finally, we come to the state of  
18 Tennessee where THEC authorizes approximately 330  
19 postsecondary institutions according to your web site.  
20 The commission's fiscal year 2009-2010 budget calls for  
21 nearly \$1.587 million in revenue from licensure fees,  
22 making the effective cost per licensed institution  
23 about \$4800.

24 This high cost per institution begs  
25 the following questions: why does it cost Tennessee

1 significantly more to regulate postsecondary education?  
2 Can THEC use established best practices and  
3 benchmarking to be more efficient?

4                   Finally, I just want to say that high  
5 licensure fees will discourage future investment in  
6 Tennessee by accredited career colleges. Tennessee's  
7 accredited career colleges conferred 42 percent of  
8 certificates, 26 percent of associate degrees,  
9 1 percent of bachelor's degrees, and 2 percent of  
10 master's degrees in 2007 and 2008. And this comes from  
11 IPEDS' data.

12                   In closing, it is the interest of  
13 students and institutions alike for THEC to keep  
14 licensure fees as reasonable as possible. I know the  
15 commission is concerned about tuition costs and then --  
16 and I hope that high licensure fees are not another  
17 inflationary pressure on them. Thank you.

18                   DR. RHODA: Thank you. Bill Faour  
19 and then Ryan Ball.

20                   MR. FAOUR: Good morning. My name is  
21 Bill Faour. I'm with Chattanooga College, Chattanooga,  
22 Tennessee. Let me correct that. That's Chattanooga  
23 College Medical, Dental & Technical careers,  
24 Chattanooga, Tennessee.

25                   And I really don't think I can add

1 anything that you've not already heard, but, first, I  
2 do want to reiterate that good schools, like the people  
3 who are here representing, want proper oversight  
4 because we know that it ensures and helps us to become  
5 better schools. I don't think there's any question to  
6 that; that we are all in agreement to that.

7           After all that's said and done, it  
8 comes down to -- in my mind to equity and fairness.  
9 And, in essence, that's what we're looking at. Is this  
10 a fair increase? Can we justify what we say we need?  
11 And as we look to our own selves -- if we have a  
12 business school or if we are a head of a university or  
13 businessperson or on the board itself, that's all we  
14 ever ask of our people; that's all we ever ask of our  
15 students. Can you perform? Can you work in an  
16 equitable and a fair environment?

17           And, again, I really can't reiterate  
18 anything more than Rhessa had said or the previous  
19 gentleman or Ms. Williams. You have good notes. You  
20 can review these and take it back with a conscience of  
21 fairness and equity. And I think the good schools and  
22 the schools that are here representing will inevitably  
23 always support the proper decision. I thank you for  
24 your time.

25           DR. RHODA: Thank you. And Ryan

1 Ball.

2 MR. BALL: Good morning. Madam Chair  
3 and members of the commission, thank you for the  
4 opportunity to speak today. Again, I don't know that I  
5 need to echo a lot of the comments, but I think there  
6 is -- it's necessary to state some of the proposed  
7 increases in the fees. I represent University of  
8 Phoenix in Tennessee. We have campuses in Memphis,  
9 Chattanooga, and two in Nashville. And we're seeing  
10 about a 400 percent increase in the fees. And while we  
11 understand and we support THEC and we think that that's  
12 necessary to provide a certain amount of oversight and  
13 regulation by transparency to our students, I think  
14 maybe we can look at things a bit differently. And I  
15 know that our past relationship with THEC has been  
16 supportive and very good, and I think it's necessary.  
17 But, again, I think we need to really look at the fee  
18 structures. It's just a bit extreme. Granted it  
19 hasn't increased for 15 years, so we appreciate that.  
20 But, again, for us specifically, a 400 percent  
21 increase -- I think that that's -- that's a bit to be  
22 discussed and reviewed.

23 And having said that, I think that  
24 maybe we could look at -- something the University of  
25 Phoenix would be supportive of would be a -- maybe a

1 cap. We're looking at using the same formula that THEC  
2 has come up with and maybe capping that at \$20,000 per  
3 location for the University of Phoenix. And that's  
4 something I think that we could live with, and we could  
5 support THEC in their mission to again provide that  
6 amount of oversight to our Tennessee students. That  
7 being said, that's all I have. Thank you.

8 DR. RHODA: Thank you. And thank you  
9 to all of those who made comments. This completes the  
10 list of those who asked to make comments. Is there  
11 anyone else who would care to be heard at this time?  
12 Okay. Madam Chair.

13 CHAIRWOMAN WINCHESTER: Thank you,  
14 Dr. Rhoda. I would echo Dr. Rhoda's thanks for those  
15 who have offered comments here this morning. If anyone  
16 wishes to provide written comments, please direct those  
17 to Mrs. Woodruff. Thank you.

18 The commission and the committee will  
19 take all comments under advisement. It is anticipated  
20 that the committee will consider the proposed rules at  
21 its April 2, 2009, meeting for the purpose of making  
22 recommendations to the commission. And that the  
23 commission will consider the recommendations of the  
24 committee at our meeting on April 23, 2009.

25 There being no further comments, the

1 rulemaking hearing is adjourned, and we will take a  
2 ten-minute recess at this time.

3 (Rulemaking hearing concluded  
4 at 10:43 a.m.)  
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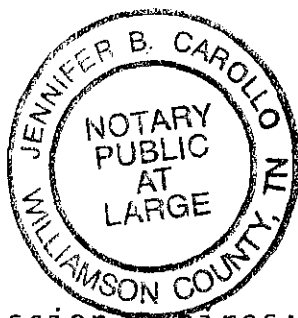
REPORTER'S CERTIFICATE

STATE OF TENNESSEE )  
COUNTY OF WILLIAMSON )

I, Jennifer B. Carollo, Registered Professional Reporter, Certified Court Reporter, and Notary Public for the State of Tennessee, hereby certify that I reported the foregoing proceedings at the time and place set forth in the caption thereof; that the proceedings were stenographically reported by me; and that the foregoing proceedings constitute a true and correct transcript of said proceedings to the best of my ability.

I FURTHER CERTIFY that I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome or events of this action.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of office this 20th day of March, 2009.



*Jennifer B. Carollo*

JENNIFER B. CAROLLO,  
REGISTERED PROFESSIONAL  
REPORTER, CERTIFIED COURT  
REPORTER, AND NOTARY PUBLIC  
FOR THE STATE OF TENNESSEE

My Commission Expires:  
June 23, 2012

**RECEOMMENDATION OF  
THE COMMITTEE ON POSTSECONDARY EDUCATION INSTITUTIONS**

**Amendments to Rule 1540-1-2-.25(3) and (4) Governing Fees**

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

(a)	Late Renewal Fee (in addition to base renewal fee)	\$1,000
(b)	Renewal Extension Fee (in addition to base renewal fee)	\$500
(c)	Initial New School Application	\$3,000
	Each Proposed Program	\$500
(d)	Associate Degree Granting Institutions (in addition to base initial application and program fee)	\$1,000
(e)	Bachelor Degree Granting Institutions (in addition to base initial application and program fee)	\$2,000
(f)	Masters Degree Granting Institutions (in addition to base initial application and program fee)	\$3,000
(g)	Doctoral Degree Granting Institutions (in addition to base initial application and program fee)	\$4,000
(h)	Authority to Grant Degrees – Unaccredited Institutions (in addition to base initial application, program and degree level fees)	\$1,000
(i)	New Programs – Authorized Institutions	\$500
(j)	Degree Level Elevation – Authorized Institutions	\$1,000
(k)	Agent Fee In-State – Initial Application	\$500
(l)	Agent Fee In-State – Renewal Application	\$250
(m)	Agent Fee Out-of-State– Initial Application	\$600
(n)	Agent Fee Out-of-State– Renewal Application	\$300
(o)	Institutional Name Change	\$500
(p)	Change of Address	\$500
(q)	Non-compliance Fines (per day, per violation)	\$500

- (4) Reauthorization fees for in-state institutions are based upon an institution's annual gross tuition revenue collected during the previous fiscal year (July 1 to June 30). Reauthorization fees for out-of-state institutions are based on an institution's annual gross tuition revenue collected from Tennessee students during the previous fiscal year (July 1 to June 30). In each instance the reauthorization fee shall equal .75% of the annual gross tuition collected with a minimum fee of \$750 and maximum fee of \$25,000.

## Responses to the Comments Offered as Part of the Rulemaking Proceeding Initiated on January 21, 2009

*The Tennessee Higher Education Commission is referred to herein as THEC or the Commission and the Division of Postsecondary School Authorization is referred to herein as DPSA.*

<b>Nature of Comment</b>	<b>Institutions Offering Comment</b>	<b>THEC Response</b>
<p>The amount of the proposed fee increase is too great and unreasonable.</p>	<p>Crown College of the Bible, ITT Technical Institute, Massage Institute of Cleveland, Cumberland Institute of Holistic Therapies, Walden University, EDMC Schools (The Art Institute of Tennessee, Argosy University, and Brown Mackie College), Tennessee Association of Independent Colleges and Schools (TAICS), National College of Business and Technology, University of Phoenix</p>	<p>THEC has statutory authority “to set fees annually based on the intent to collect revenues sufficient to cover the costs of this regulatory function (including, but not limited to travel, employee costs, legal costs, expert fees).” Tenn. Code Ann. § 49-7-2014. Through this rulemaking, THEC is seeking to recover its current operating expenses. Currently, THEC is relying on reserves to fund the budget of DPSA. It is expected that those reserves will be depleted during FY09-10. The proposed fee increases are necessary in order to fully fund the operating budget in the coming years. Using data from FY07-08, it is reasonable to conclude that the modified fee structure will result in revenues that will cover all anticipated costs even in the event that institutions close or tuition collections decrease. Specifically, the FY09-10 budget for THEC is 1.6 million dollars. It is anticipated that the modified proposed fee for annual reauthorization will result in revenues totaling at least 1.47 million dollars and that revenues from other fees will cover the remaining costs.</p>
<p>THEC should consider alternatives. Suggested alternatives were the adoption of a cap, a phased-in approach, a flat .75% fee, and fee for service.</p>	<p>Crown College of the Bible, Walden University, Cumberland Institute of Holistic Therapies, EDMC Schools (The Art Institute of Tennessee, Argosy University, and Brown Mackie College), Professional Bartending School (Nashville and Knoxville campuses), University of Phoenix</p>	<p>Given that during any year schools open and close, new programs are offered, and enrollment fluctuates, it is not possible to determine with 100% certainty the amount of fees that THEC will collect in a given fiscal year. Despite this impediment, prior to issuing the Notice of Rulemaking Hearing, THEC considered many alternatives and chose the fee structure set forth in the notice, because it provides the greatest degree of certainty that THEC will be able to fully collect the costs associated with its regulatory function. After reviewing the written and oral comments with regard to alternative proposals, THEC has modified the fee structure, but remains sufficiently satisfied that the estimated revenues from the modified fee structure will generate sufficient revenues to cover the current operating budget of DPSA.</p>

<b>Nature of Comment</b>	<b>Institutions Offering Comment</b>	<b>THEC Response</b>
<p>The five (5) additional staff members added to the Division of Postsecondary School Authorization are not needed for diligent and effective regulation.</p>	<p>National College of Business and Technology</p>	<p>The question of whether THEC requires additional staff to effectively perform its statutorily mandated duties has already been addressed by the legislature. Specifically, the argument in this proceeding was previously presented to the Joint Legislative Study Committee on Proprietary Schools and Career Colleges and rejected. During meetings of the joint committee, members discussed the need for THEC to regulate proprietary schools more aggressively and the need for additional regulatory staff. Later, the General Assembly passed 2008 Tenn. Pub. Ch. 1203, §. 10, Item 38. This bill provided funding of \$430,000 for the addition of five (5) full-time positions. Pursuant to the committee discussions and legislation, THEC added five (5) additional staff members. However, absent the legislative actions, THEC finds that the five (5) additional staff members are necessary to fully implement the requirements of Title 49, Chapter 7, Part 20, Tenn. Code Ann. § 49-7-207, Tenn. Code Ann. § 49-7-144, and the applicable rules.</p>
<p>The timing of the proposed fee increase is inappropriate given the poor economy.</p>	<p>Crown College of the Bible, Massage Institute of Cleveland, Cumberland Institute of Holistic Therapies</p>	<p>THEC has not raised its fees since 1992. THEC recognizes that the fee increase is substantial and that the timing is not ideal. Currently, however, THEC cannot cover the costs of its regulatory function absent an increase in fees. The total amount of the fee increase is needed at this time to cover anticipated costs.</p>
<p>The proposed increase is arbitrary.</p>	<p>Tennessee Association of Independent Colleges and Schools (TAICS)</p>	<p>The proposed increase is in no way arbitrary. The increase is designed to cover the operating budget of DPSA as is permitted by Tenn. Code Ann. § 49-7-2014. The argument presented by TAICS is that the fee is arbitrary because it does not correlate to increased regulation and enforcement. This is false. The fee increase is necessitated in part by the addition of five (5) staff members. The addition of these staff members has aided THEC in complying with Tenn. Code Ann. §49-7-2019 (enacted in 2008), which requires that THEC post job placement and graduation information on THEC’s website. Additionally, the new staff members have been necessary to better the regulatory function of THEC. Specifically, as a result of having the new staff members, THEC has been able to verify job placement and graduation information by increasing the number of compliance audits conducted by DPSA. Additionally, THEC has been able to more thoroughly scrutinize compliance with regulations during the reauthorization process, to better represent THEC in legal matters, and to more effectively identify and communicate with institutions that are not in compliance with statutes and rules.</p>

<b>Nature of Comment</b>	<b>Institutions Offering Comment</b>	<b>THEC Response</b>
<p>The proposed fee increase is not comparable to other states.</p>	<p>EDMC Schools (The Art Institute of Tennessee, Argosy University, and Brown Mackie College), Tennessee Association of Independent Colleges and Schools (TAICS), National College of Business and Technology, Career College Association</p>	<p>A comparison of states cannot be fully relied on because the states do not have the same fee structure, degree of oversight, regulatory jurisdiction, or staffing levels. At first blush a comparison of factors, such as initial authorization fees, maximum renewal fees, or calculations of cost per institution, may seem persuasive. However, a more studied review reveals that significant differences among states compromise the validity of any comparative results. Examples of important differences include:</p> <ul style="list-style-type: none"> <li>• In some states two organizations do the work of DPSA. Such states include Alabama, Arkansas, Kentucky, North Carolina, Ohio and Texas. The significance of this difference is magnified when both state agencies are not used for comparative purposes. For example, some have referenced the \$570,000 FY08-09 budget of the Ohio State Board of Career Schools and Colleges for the purposes of comparing the 1.6 million dollar FY08-09 budget of DPSA. However, these references fail to mention that in Ohio a group within the Ohio Board of Regents also oversees certain private institutions and the budget for that group is 1.8 million for FY08-09.</li> <li>• Many states charge fees that are not included in the modified proposed rule. For example, the Georgia Nonpublic Postsecondary Education Commission charges \$500 for a request for exemption and \$100 for request for renewal of exemption. The Florida Commission for Independent Education can charge between \$500 and \$2000 for processing a complaint. The Ohio State Board of Career Colleges and Schools has the authority to charge institutions a maximum of \$5 per Ohio student. Some states, including Alabama, Florida and Georgia, charge a specific fee for site visits. Tennessee does not have and is not proposing any such fees.</li> <li>• The bases for the initial and reauthorization fee calculations differ. Although a majority of states use gross tuition collected as the basis for the calculation of fees due, other states factor in the number of students, flat fees, length of programs, types of instructional sites and travel expenses associated with site visits.</li> <li>• Some institutions have compared the number of employees presumably to support the argument that DPSA is overstaffed. It is intuitive that absent waste and inefficiencies more staff permits an agency to better perform its assigned duties. Absent waste and inefficiencies, it is self-evident that 3 employees cannot do the same work as well as 14. Tennessee has a robust regulatory scheme and the current staffing levels are needed to fully implement that scheme.</li> <li>• In Alabama, Kentucky, and South Carolina the regulatory agencies receive some level of state funding. In Tennessee, DPSA receives no state funds.</li> </ul> <p>These points highlight the differences between states and demonstrate that the comparisons offered are without the detail sufficient to allow complete reliance.</p>

<b>Nature of Comment</b>	<b>Institutions Offering Comment</b>	<b>THEC Response</b>
The proposed fee increase along with other factors will result in loss of small schools.	Massage Institute of Cleveland, National College of Business and Technology	THEC believes that the proposed fee amounts for lower grossing institutions are reasonable despite the amount of the increase. The minimum fee is \$750, which represents a \$400 per year increase. Per Rule 1540-1-2-.14(4), institutions must maintain financial resources adequate to meet maintenance and overhead expenses; payroll expenses; books, supplies, and equipment expenses; and general operating costs. Arguably, an institution that is unable to pay \$750 each year does not have the financial resources necessary to adequately continue operations. Similarly, as an institution's gross tuition grows, the institution is better situated to cover the additional fee. Also, Rule 1540-1-2-.14(6) permits institutions grossing less than \$100,000 in tuition to request a waiver of the requirement to file audited financial statements. Such a waiver represents a reduction of regulatory costs.
The proposed fee increase creates a precedent for similar increases in the future.	EDMC Schools (The Art Institute of Tennessee, Argosy University, and Brown Mackie College)	The revenue generated from current fees is insufficient to cover the cost of regulation contemplated by Title 49, Chapter 7, Part 20. THEC has statutory authority (Tenn. Code Ann. § 49-7-2014) "to set fees annually based on the intent to collect revenues sufficient to cover the costs of this regulatory function (including, but not limited to travel, employee costs, legal costs, expert fees)." The proposed rule intends to collect only the costs of the regulatory function, which THEC is statutorily required to do.
The proposed fee increase will cause institutions to reconsider their investment in Tennessee.	Walden University, National College of Business and Technology (NCBT), Career College Association	The amount of an institution's investment in Tennessee will be determined based on the ability of the institution to generate revenues in a desired proportion to the amount of investment. It is not likely that the imposition of the modified proposed fee would greatly affect a determination with regard to whether to contribute investment dollars to Tennessee. In particular, between the January 2008 and 2009 Committee agendas, NCBT and Walden University, combined, were approved to offer 29 new programs. This continued investment in Tennessee indicates that anticipated revenues are present in Tennessee to cover additional costs.

<b>Nature of Comment</b>	<b>Institutions Offering Comment</b>	<b>THEC Response</b>
<p>If fees are to be increased, institutions should see additional or enhanced services.</p>	<p>Crown College of the Bible, Cumberland Institute of Holistic Therapies, Tennessee Association of Independent Colleges and Schools (TAICS)</p>	<p>THEC notes that the regulatory efforts of DPSA have already expanded as a result of the budget increase and expects that those efforts will continue to expand. Over the past year, THEC, through the work of the staff of DPSA, has implemented the requirement of Tenn. Code Ann. 49-7-2019, which required THEC to post the graduation and placement rates for all institutions on THEC’s website. This effort was accompanied by audits of all institutions to verify the data submitted by schools and compliance with certain rule provisions. In the past, DPSA has not been able to conduct such a large-scale effort. DPSA intends to continue these types of audits by auditing approximately 1/3 of all institutions each year and by expanding the scope of the audits. Additionally, DPSA has worked to more strictly enforce the requirements of Title 49, Chapter 7, Part 20 and the related rules. During the reauthorization period, many institutions were surprised by findings that had not been previously recognized. Also, the legal work of DPSA has increased significantly over the past few years. The addition of an attorney to the staff has served to more efficiently handle these matters, including bringing noncompliant institutions into compliance. These are examples of improvements within the Division. It is without questions that students and institutions in Tennessee will benefit from the enhanced DPSA staff.</p>
<p>THEC indicated it could absorb the cost of last year’s legislation.</p>	<p>EDMC Schools (The Art Institute of Tennessee, Argosy University, and Brown Mackie College)</p>	<p>During the January 28, 2008 joint study committee discussion, THEC was asked about the need to increase fees in the event that additional staff members were added. In response, Dr. Rhoda stated: “We are totally user fee dependant and we have built up a reserve over the years really for just such an occasion or in the event that there is some change in the whole organization so we could at least for one year; we can get it initiated without increasing the fees – minimally a year.” The plain language of Dr. Rhoda’s comments is that fees would not be increased for one year. THEC initiated the rulemaking process, which at best is a lengthy process, in January 2009, one year after the joint study committee meeting. The earliest that THEC anticipates the rules becoming effective is August 1, 2009. This means that the fee increase will not occur until more that 19 months after the final joint study committee meeting.</p>

<b>Nature of Comment</b>	<b>Institutions Offering Comment</b>	<b>THEC Response</b>
The use of a fiscal year for purposes of reauthorization results in additional accounting and administrative staff costs when the institution operates on a calendar year.	Nashville Auction School, LLC	Having reviewed the concern expressed, DPSA will modify the reauthorization application to state that an institution may file the required financial information using the institution's fiscal year.
The Renewal Extension Fee in Paragraph 3(b) is punitive given that the reauthorization fiscal year may not be the same as an institution's fiscal year.	Nashville Auction School, LLC	The fee should remain in the rule. There is a need to prevent extension requests based on nothing more than missing a deadline. Moreover, the fact that DPSA will modify the reauthorization application to permit institutions to file the required financial information using the institutions fiscal year should mitigate the concerns of Nashville Auction School, LLC.