

**DATE:** April 24, 2014

**SUBJECT:** Rule Revisions

**ACTION RECOMMENDED:** Adopt the Final Rule Revisions and Comment Responses

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**Materials Provided for Your Consideration:**

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| Redline of Final Rule Revisions .....                 | Attachment 1 |
| Summary of Comments and Responses Thereto .....       | Attachment 2 |
| Transcript of March 27, 2014 Rulemaking Hearing ..... | Attachment 3 |
| All Timely Written Comments.....                      | Attachment 4 |

**Background Information:**

On March 27, 2014, a rulemaking hearing was held as noticed in the February 3, 2014 Notice of Rulemaking Hearing filed with the Tennessee Secretary of State. The Commission currently authorizes 188 institutions. Thirteen of those institutions were represented at the hearing while six made oral comments. Additionally, a representative for the Tennessee Association of Independent Colleges and Schools commented. Written comments were also timely submitted by three institutions not represented at the hearing.

On April 4, 2014, DPSA sent the Committee on Postsecondary Educational Institutions the final rule revisions and related materials, including the proposed responses to comments. At the April 10, 2014 Committee meeting, the Committee voted unanimously to provide a favorable recommendation to the Commission.

The final rule revisions include changes to multiple rule sections in Chapter 1540-01-02 and a proposal to add Rule .26, Return of Regulatory Fees. The revisions serve to bring our rules more in line with our enabling legislation, provide better organization and clarity, and memorialize current practices.

**Next Steps:**

The final revisions and proposed responses to comments are before you today for adoption. Two actions are contemplated – one, a vote on the adoption of the final rule revisions and, two, a vote on the adoption of the responses to the written and oral comments received by the Commission.

In the event that the final rule revisions are adopted, they will be sent to the Attorney General pursuant to Tenn. Code Ann. § 4-5-211. At that time, the Attorney General will review the legality and constitutionality of the revised rules.

## FINAL 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:

...

- (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.

...

- (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.~~

...

## **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 education, instruction or training that areis:
1. maintained or given by an employer or group of employers, for employees or for persons they anticipate employing without charge, which shall include taking a payroll deduction or requiring a minimum length of employment, except that the employer/institution may accept funds provided through a state or federal program that provides adequate institutional and/or programmatic review as determined by the Commission staff; or
  2. maintained or given by a U.-S. Department of Labor or state recognized labor organization, without charge, (1) to its membership or apprentices or (2) without charge, except that the department or organization may accept funds provided through a state or federal program that provides adequate institutional and/or programmatic review as determined by the Commission staff; or
  3. financed and/or subsidized by public funds, without charge to the students, having a closed enrollment; or
  4. given under a contract agreement, having a closed enrollment, at no cost to the student and does not offer ~~degrees or~~ educational credentials ~~such as but not limited to diplomas or special certifications~~ that in the opinion of

the Commission are specifically directed toward new or additional vocational, professional or academic goals.

- (b) Programs, seminars or workshops that are recreational or avocational, including motivational or enrichment programs, as determined by the Commission staff shall be considered exempt from authorization requirements. Upon review by the Commission staff, a provider that presents the instruction in such a way as to suggest a vocational end may be required to become authorized, or clarify through public advertising that the program, seminar, or workshop is in fact recreational or avocational.
- (c) Short-term programs, seminars or workshops that are solely for professional enhancement as determined by the Commission staff shall be considered exempt from authorization requirements. Education, training or instruction resulting in specialized certifications clearly used to denote technical, professional or vocational proficiency toward an additional vocational goal or new job title must be authorized for operation.
- (d) Intensive review courses designed solely to prepare students for graduate or professional school entrance exams and professional licensure exams. The latter shall include, but not be limited to, intensive review courses for certified public accountancy tests, insurance or securities licensure/registration, the examination for professional practice in psychology, and the bar examination.
- (e) Training designed to prepare students for credit-by-examination tests may be considered exempt from authorization requirements. The exemption is contingent on the entity's agreement to indicate in all promotional materials that the training is for test preparation for credit-by-examination tests and to refrain 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 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 apply to determinations of exemption ~~be used:~~

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

(b) ~~Institutional~~ Any institution or program exemption is subject to annual ~~Commission~~ staff review ~~and/or revocation any time the activity deviates from the original determination factors for exemption.~~

(c) ~~Exemptions secured under this section of the rules are effective for each authorization year beginning on July 1, except as individuals or groups of institutions are notified prior to June 15 preceding any authorization year by a letter from the Executive Director of the Commission which shall state the bases for removal of any exemption.~~

(d) ~~Exemptions~~ Any institution or program exemption can be revoked or amended by the Commission ~~staff at any time that the basis for the exemption changes or no longer exists as they pertain to individual institutions whenever it is determined by the Commission that an institution exempted by the Act or these regulations has not acted in accordance to the purpose of T.C.A. § 49-7-2002, 'Legislative intent'.~~

(3) To request a determination of exemption, institutions shall submit a descriptive narrative explaining how the institution and/or program(s) qualify for an exemption. The request shall include a citation to the exemption provision relied on in the Act and/or these rules and documentation supporting the requested exemption such as:

~~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.**

- ...
- (6) Bond Requirements ~~for Institutions~~:
- (a) Institutions must, on forms provided by the Commission, secure for student indemnification purposes, from a surety company qualified and authorized to do business in Tennessee, a continuous surety bond in the amount of:
1. ten thousand dollars (\$10,000) for in-state institutions, out-of-state public institutions and all institutions providing primarily religious instruction, and
  2. twenty thousand dollars (\$20,000) for all other institutions, including out-of-state private institutions.

- (b) Out-of-state institutions must, on forms provided by the Commission, secure a surety bond for agents in the amount of five thousand dollars (\$5,000) per agent from a surety company qualified and authorized to do business in Tennessee with the institution as principal.
- (c) Bonds provided by institutions must be site specific.
- (d) An irrevocable letter of credit secured by a certificate of deposit or a cash deposit with a bank may be accepted in lieu of the bond pending approval of the Commission staff. Such deposits are subject to the same terms and conditions provided for in the surety bond requirement under this regulation.
- (a) Institutions not exempted from surety bond provisions, must on forms provided by the Commission, secure for student indemnification purposes, from an insurance company licensed in Tennessee, a surety bond for the penal sum of \$10,000 for in-state institution and \$20,000 for out-of-state education institution, including branch campuses as specified in T.C.A. 49-7-2013, except as follows:
1. In state institutions with substantially less unearned tuition or student exposure than \$10,000 may post a surety bond equal to 125% of the maximum unearned tuition or student exposure rounded upward to the nearest thousand dollars (prior written administrative agreement by the Commission staff is required).
- (7) Out of state institutions must, on forms provided by the Commission, secure a surety bond for agents in the penal sum of \$5,000 per agent from a surety company authorized to do business in Tennessee with the applicant institution as principal. Such applications must be accompanied by verification by the issuing agency that the individual seeking a permit is covered by a \$5,000 surety bond.
- (8) Bonds provided by institutions under Section 1540-01-02-.07(7) must be accompanied by the name, office address, and phone number of the issuing insurance company representative and the bond must be site specific.
- (9) Bonds provided by institutions under Section 1540-01-02-.07(7) must be identified on the top half of the first page by the name and the address of the institution. Bonds and verification of bonds should be forwarded to the Commission by institutional directors, and not directly from issuing companies.

(10) Certificates of deposit or a cash deposit with a bank may be accepted in lieu of the bond with approval of the Commission staff. Such deposits are subject to the same terms and conditions provided for in the surety bond requirement under this regulation.

...

**1540-01-02-.08**

## **REGULATIONS FOR SPECIFIC SCHOOL TYPES.**

...

(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.

...

(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.

...

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

**1540-01-02-.13  
STANDARDS.**

**ENROLLMENT AGREEMENTS AND DISCLOSURE**

- ...
- (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 checklist verifying that the student:
- ...
- (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/thech](http://www.tn.gov/thech) 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/thech](http://www.tn.gov/thech) 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."
- ...

## 1540-01-02-.14

## FINANCIAL STANDARDS.

- ...
- (6) All authorized institutions must file each year the most recent audited financial statement, certified by an independent certified public accountant for the most recent institutional fiscal year subject to the following:..
- (a) ~~For multi-campus institutions, or for institutions owned by one the same parent company may submit,~~ an audited consolidated corporate financial statement ~~shall be routinely required~~. The staff, Committee, or Commission, however, may request additional campus or institution specific-information where needed to protect the public interest. ~~The audited income statement must be compiled for each institution, or group of institutions owned by the same company, authorized to operate under the Act;~~
- (b) ~~The balance sheet must reflect owner's (proprietorship, partnership, corporation, or other) assets and liabilities. In the preparation of these statements, it should be noted that goodwill~~

~~is not generally considered a current asset unless it is being amortized;~~

- (c) ~~R~~eleted parties must be disclosed, including related party footnotes, debt agreements with owners, and supplemental footnotes on separate campuses or branches are expected.
  - (d) It should be noted whether or not tuition revenue is recognized up front or on a pro rata basis. ~~Current financial statements on each site separately authorized under the Act must be filed annually.~~
  - (e) Within ~~five three~~ years from initial temporary authorization, neither the ratio of current fund revenues to current fund expenditures nor the ratio of current assets to liabilities, both site specific and corporate, where applicable, shall be less than 1:1, without convincing explanation.
  - (f) Institutions that have annual gross tuition revenue of one million dollars (~~\$1,000,000~~) or less may request a waiver, by the established deadline, of the audit contemplated by this section and provide the most recent financial information in a format acceptable to ~~on~~ forms provided by the Commission staff.
- (7) ~~The institution must submit an operating statement and balance sheet to the Commission within four months of the end of the institutional fiscal year. In addition, if a regular or certified audit is available, it should be submitted within four months of the end of the institutional fiscal year as well. All institutions seeking authorization must maintain a business account with a financial institution that is federally insured in said institution's name.~~

## **1540-01-02-16**

## **PERSONNEL AND INSTRUCTOR QUALIFICATIONS.**

- (1) Institutions must provide and maintain qualified faculty and staff in order to fulfill the mission of the institution and all obligations to the students. As further described below, personnel qualifications must be submitted to the Commission staff on a School Personnel Application no later than ten (10) days after the hire date.
  - (a) Unaccredited institutions must submit to the Commission staff School Personnel Applications for all instructors and administrative personnel as that term is defined in this rule.
  - (b) Institutions accredited by an accrediting body recognized by the U.S. Department of Education must submit to the Commission staff School Personnel Applications for all administrative personnel as that term is defined in this rule. For each instructor, an accredited institution shall maintain on-site documentation that demonstrates the minimum qualifications and must submit

such documentation and a School Personnel Application at any time upon request from the Commission staff.

- (2) Administrative personnel and instructors shall meet all qualifications listed in this rule. Evidence of education, experience, or training (including official transcripts) for each personnel must be maintained on-site at the location. Institutions must submit a copy of this evidence at any time upon request from the Commission staff.
- ...

(~~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.
- ...

- (d) An instructor must be qualified by education and experience/background ~~demonstrably higher than the level to be taught~~ and must meet the following qualifications as minimum requirements:
- ...

4. Minimum for an associate level:

- (i) Meet the minimum requirements for doctorate, masters or baccalaureate level; or
- (ii) Hold an associate degree from a postsecondary institution judged to be appropriate by the Commission and either:
- (I) an associate degree with a concentration in the subject to be taught and (1) one year of practical experience; or

(II) an associate degree not in the subject area but with a minimum of two (2) years of practical experience within the last five (5) years in the subject area to be taught and satisfactory completion in a postsecondary educational institution of nine (9) semester hours or twelve (12) quarter credit hours in the subject area to be taught. Additional years of documented experience in the subject area may be substituted for semester / quarter hour requirements.

5. Minimum for diploma and certificate level:

- (i) Meet the minimum requirements for doctorate, masters, baccalaureate or associate level; or
- (ii) Hold a high school diploma or GED and a certificate of completion from a postsecondary institution judged to be appropriate by the Commission in a relevant subject area and a minimum of three (3) years of practical experience within the last seven (7) years in the subject area to be taught. Additional years of documented experience in the subject area may be substituted for the postsecondary educational requirements.

~~(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.

...

(15) Agents ~~and Recruiters~~:

(a) ~~Institutional a~~Agents as defined by the Act and ~~these regulations~~ Rule 1540-01-02-.03 must submit an Agent Permit ~~a~~Application, ~~on forms as~~ provided by the Commission ~~staff and must receive approval have authorization~~ and an agent permit ~~from the Commission staff and secure the appropriate bond~~ prior

to any solicitation. The ~~applicant application~~ must be accompanied by the following:

1. ~~new applicants must forward~~ recommendations by two (2) reputable persons certifying that the applicant is of good character and reputation;
2. a check payable to the State Treasurer of Tennessee as required under these regulations;
3. a surety bond ~~of \$5,000 per agent of an out of state institution or~~ as specified in Rule 1540-01-02-.07 ~~of these rules~~; and
4. certification by the institutional director that the applicant will be directed to act in accordance with these regulations.

(b) Agent permits must be renewed every year. The expiration date of a permit is one (1) year from the date of issue or immediately upon termination of employment whichever occurs first.

(c) ~~Agents must have separate permits to represent separate institutions unless the institutions have common ownership such that the institutions present a common name to the public and have the same mission. Mutual agreement by institutions is required. Agents must have separate permits to represent separate institutions unless they are commonly held. Mutual agreement by institutions is required.~~

...

(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.

...

...

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

(a) the institution has a written policy in the catalog that includes the definition of cash and details the qualifications for receiving and the amount of a cash discount and

(b) the student verifies receipt and understanding of the policy in the pre-enrollment checklist.

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

(a) the criteria for receiving the award are clearly defined in writing;

(b) the institution has a form and procedure to verify eligibility; and

(c) the amount of the award is a flat dollar amount or subject to calculation using a defined formula or scale.

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

(a) No moneys shall be returned if the amount due an institution is less than twenty-five dollars (\$25.00).

(b) The percentage of the excess due an institution is calculated by determining the percentage paid of the total reauthorization fees collected during the fiscal year.

(c) Institutions that did not pay a reauthorization fee during the fiscal year shall not receive any share of the excess.

(d) Institutions that close or that have had their authorization to operate revoked prior to the end of the fiscal year shall forfeit any share of the excess.

(2) At the request of an institution a refund will be made as follows:

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

## **Summary of Comments on February 3, 2014 Notice of Rulemaking Hearing and Responses**

The Division of Postsecondary School Authorization (DPSA) prepared this summary for consideration by the Tennessee Higher Education Commission at its April 24, 2014 meeting. The summary includes oral comments made at the March 27, 2014 rulemaking hearing as well as written comments submitted by March 27, 2014. All rule citations are to the current, effective numbering scheme unless otherwise noted.

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

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

### **Comment Summary**

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

### **Commenting Entities**

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

### **Commission Staff Response**

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

## **Summary of Comments on February 3, 2014 Notice of Rulemaking Hearing and Responses**

adopt revisions to these rules, it would be acting outside the scope of the notice and violating T.C.A. § 4-5-203(c)(2)(B).

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

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

### **Rules of Interest – Definition of Agent and Agent Permitting**

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

### **Comment Summary**

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

### **Commenting Entities**

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

## **Summary of Comments on February 3, 2014 Notice of Rulemaking Hearing and Responses**

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- Remington College (Nashville and Memphis, Tennessee and Heathrow, Florida)

### **Commission Staff Response**

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

#### **Rule of Interest – Definition of Agent**

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

### **Comment Summary**

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

### **Commenting Entities**

North Central Institute (Clarksville)

### **Commission Staff Response**

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

#### **Rule of Interest – Degree Designations**

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

### **Comment Summary**

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

### **Commenting Entities**

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

## **Summary of Comments on February 3, 2014 Notice of Rulemaking Hearing and Responses**

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- Southeastern Institute (Nashville)
- Remington College (Nashville and Memphis, Tennessee and Heathrow, Florida)

### **Commission Staff Response**

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

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

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

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

#### **Comment Summary**

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

#### **Commenting Entities**

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

## **Summary of Comments on February 3, 2014 Notice of Rulemaking Hearing and Responses**

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### **Commission Staff Response**

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

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

### **Rule of Interest – In-Field Placement Services**

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

### **Comment Summary**

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

### **Commenting Entities**

Bridgepoint Education (Ashford University and University of the Rockies)

### **Commission Staff Response**

DPSA includes this comment for purposes of the rulemaking record; however, the subject of the comment is outside the scope of this rulemaking. Pursuant to T.C.A. § 4-5-203(c)(2)(B), an agency may make changes to a rule after the rulemaking hearing as long

## **Summary of Comments on February 3, 2014 Notice of Rulemaking Hearing and Responses**

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as the changes are within the scope of the rulemaking notice. In this instance, Rule 1540-01-02-.13(4) was not addressed in the Notice of Rulemaking Hearing. Therefore, if the Commission were to adopt revisions to this rule, it would be acting outside the scope of the notice and violating T.C.A. § 4-5-203(c)(2)(B).

### **Rule of Interest – Filing of School Personnel Applications**

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

#### **Comment Summary**

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

#### **Commenting Entities**

Bridgepoint Education (Ashford University and University of the Rockies)

#### **Commission Staff Response**

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

### **Rule of Interest – Definition of Administrative Personnel**

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

#### **Comment Summary**

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

#### **Commenting Entities**

Bridgepoint Education (Ashford University and University of the Rockies)

#### **Commission Staff Response**

DPSA includes this comment for purposes of the rulemaking record; however, the subject of the comment is outside the scope of

## **Summary of Comments on February 3, 2014 Notice of Rulemaking Hearing and Responses**

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this rulemaking. Pursuant to T.C.A. § 4-5-203(c)(2)(B), an agency may make changes to a rule after the rulemaking hearing as long as the changes are within the scope of the rulemaking notice.

Although Rule 1540-01-02-.16(1)(b) is included in the Notice of Rulemaking Hearing, other rules defining and using the term “administrative personnel” are not in the notice. Specifically, Rule 1540-01-02-.16(3) and (4) are not addressed in the notice.

Therefore, DPSA is not recommending adoption of this comment at this time. Additionally, DPSA believes the definition is clear and the term “administrative personnel” best suits the needs of a variety of entities and organizational structures.

### **Rules of Interest - Personnel and Instructor Qualifications**

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

### **Comment Summary**

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

### **Commenting Entities**

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

### **Commission Staff Response**

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

## **Summary of Comments on February 3, 2014 Notice of Rulemaking Hearing and Responses**

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revisions to these rules, it would be acting outside the scope of the notice and violating T.C.A. § 4-5-203(c)(2)(B).

As to 1540-01-02-.16(2) and (11)(b) and (c), DPSA notes that it is intended that the paragraphs and subparagraphs as currently worded will remain in the rules. The only language revision proposed in the December 6, 2013 draft language sent to institutions was a typographical correction to .16(11)(b) that did not affect the meaning of the subparagraph. While this correction could have been included in the Notice of Rulemaking Hearing, it was not, and given such, it would be outside the scope of the rulemaking to include the revision at this time. DPSA will investigate whether the typographical correction can be made outside the rulemaking process of the Uniform Administrative Procedures Act.

### **Rule of Interest – Cash Discounts**

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

#### **Comment Summary**

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

#### **Commenting Entities**

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

#### **Commission Staff Response**

No response is necessary.

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### **Rule of Interest – Cash Discounts**

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

#### **Comment Summary**

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

#### **Commenting Entities**

Bridgepoint Education (Ashford University and University of the Rockies)

#### **Commission Staff Response**

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

## **Summary of Comments on February 3, 2014 Notice of Rulemaking Hearing and Responses**

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### **Rule of Interest - Return of Regulatory Fees**

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

#### **Comment Summary**

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

#### **Commenting Entities**

West Tennessee Business College

#### **Commission Staff Response**

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

### **Rule of Interest - Return of Regulatory Fees**

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

#### **Comment Summary**

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

#### **Commenting Entities**

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

#### **Commission Staff Response**

No response is necessary.

BEFORE THE TENNESSEE HIGHER EDUCATION COMMISSION  
DIVISION OF POSTSECONDARY SCHOOL AUTHORIZATION

ORIGINAL

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TRANSCRIPT OF RULEMAKING HEARING

Thursday, March 27, 2014

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Reported By:  
Christina A. Meza, LCR, RPR, CCR

nashvillecourtreporters

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THEC RULEMAKING HEARING, 3/27/14

1 APPEARANCES:

2 For THEC: Dr. Richard G. Rhoda  
3 Dr. Stephanie Bellard Chase  
4 Ms. Julie M. Woodruff  
5 Mr. Edward Phillips  
6 Ms. Latonya Todd  
7 Mr. Lindsey Vaughan  
8 Mr. Bill Crittenden  
9 Mr. Lee Cunningham

10 For TAICS: Dr. J. Gary Adcox

11 For National College of  
8 Business & Technology: Ms. Cyndee Perdue Moore

12 For Daymar Clarksville: Ms. Katharine Purnell

13 For Kaplan: Mr. Richard Lodge

14 For Genesis Career  
12 College: Ms. Patty Bowman

15 For National College of  
13 Business & Technology: Mr. Mark Liverman

16 For National College of  
15 Business & Technology: Mr. Rich Blankenship

17 For DeVry University: Mr. Peter Powell

18 For Virginia College: Mr. Dominick DeLorenzo

19 For Southeastern Inst.: Mr. Richard Collier

20 For WGU: Mr. Tyson Heath

21 For Univ. of Phoenix: Mr. Phil Quintana

22 For Goodwill Middle TN: Ms. Crystal Tyler

23 For Kaplan: Ms. Haley B. Johnson

24 For Kaplan: Mr. John Carreon

For Nossi College of Art: Mr. Dax Gomez

For Remington College: Mr. Charles Camp

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7 MS. WOODRUFF: Good morning. Can  
8 everyone hear me okay? Thank you-all for coming to our  
9 rulemaking hearing. I'm Julie Woodruff, and I will be  
10 conducting the hearing today. I will also note for the  
11 record that Dr. Richard Rhoda, the executive director  
12 of the Tennessee Higher Education Commission and chair  
13 of the committee of postsecondary educational  
14 institutions is with us today, as is Dr. Stephanie  
15 Bellard Chase, assistant executive director of the  
16 division of postsecondary school authorization.

17 I will ask any other member of the  
18 commission staff to introduce themselves. So let's  
19 see. Ed?

20 MR. PHILLIPS: Hello. Edward  
21 Phillips. I'm the associate director for regulatory  
22 affairs and compliance. Thank you.

23 MS. TODD: I'm Latonya Todd. I'm the  
24 associate director for compliance and regulatory  
25 affairs. Good to see you-all.

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1                   MS. VAUGHAN: Lindsey Vaughan,  
2 assistant director of regulatory affairs.

3                   MR. CRITTENDEN: Bill Crittenden. I'm  
4 the assistant director of compliance, division of  
5 postsecondary school.

6                   MS. WOODRUFF: Let me ask the three of  
7 you if you would please make sure Christina gets your  
8 cards so that she can make sure she's got your  
9 information correctly for the record.

10                  Before we get too far into the  
11 substance of the discussion, let me just remind  
12 everyone that restrooms are down the center hall just  
13 past the elevators. There are coffee, fruits, and  
14 breads available for you as well. Please feel free to  
15 come and go as necessary, but please be respectful of  
16 anyone who's speaking.

17                  We do have a sign-up sheet here at the  
18 table. Is there anyone who intends to speak who has  
19 not signed up?

20                  (No response.)

21                  MS. VAUGHAN: We have another  
22 commission staff member who has joined us.

23                  MR. CUNNINGHAM: Lee Cunningham,  
24 commission staff.

25                  MS. WOODRUFF: We have -- right now we

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1 have 17 people on the list. I'm not sure if all of you  
2 who signed in intend to speak, but we will start with  
3 limiting our comments to about 10 minutes given that  
4 there are 17 people on our list.

5 For purposes of providing some  
6 background, I will make a few comments and then we'll  
7 begin with the comments from the interested persons.

8 On January 30th, 2014, the commission  
9 approved a set of rule revisions for publication by the  
10 Tennessee Secretary of State in the form of a notice of  
11 rulemaking hearing and authorized a member of the  
12 division of postsecondary school authorization staff to  
13 conduct a rulemaking hearing as soon as possible.

14 Thereafter we filed a notice of  
15 rulemaking hearing with the Secretary on February 3rd,  
16 2014. Additionally, we emailed the notice to all  
17 institutions on February 10th, 2014.

18 Pursuant to this notice, any written  
19 comments are due today and should be directed to my  
20 attention. The notice also provides for today's  
21 hearing to be in this room starting at 10:00.

22 The notice lists multiple rules for  
23 discussion. All proposed revisions are to Rule  
24 Chapter 1540-01-02, and more specifically are as  
25 follows: .03, Definitions, paragraphs (1)(e), (p), and

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1 (ee); .05, Exemptions; .07, Institutional Applications,  
2 paragraphs (6) through (10); .08, Regulations for  
3 Specific School Types, paragraphs (3)(a), (8), and  
4 (10); .11, Institutional Catalog, paragraph (1) new  
5 subparagraph (r); .13, Enrollment Agreements and  
6 Disclosure Standards, paragraph (2)(i) and new  
7 subparagraph (j) and paragraph (3); .14, Financial  
8 Standards, paragraph (6) and (8) -- excuse me -- (6)  
9 and (7); .16, Personnel and Instructor Qualifications,  
10 paragraph (1), new paragraph (2), paragraph (11)(a) and  
11 (d), parts (4) and (5), paragraphs (12), (13), and (15)  
12 (a) through (c) and (g); .19, Fair Consumer Practices,  
13 new paragraphs (5) and (6); and new Rule .26, Return of  
14 Regulatory Fees.

15                   The proposed revisions are a product  
16 of multiple factors. Generally, the revisions serve to  
17 bring our rules more in line with our enabling  
18 legislation, provide better organization and clarity,  
19 and memorialize current practices.

20                   Additionally, on December 6, 2013, the  
21 division of postsecondary school authorization sent an  
22 email to all institutions seeking comments on the  
23 proposed language. The proposals contained in the  
24 notice of rulemaking hearing take those comments into  
25 consideration.

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1                   With those comments, I believe we are  
2 ready to begin our hearing, and the first person I have  
3 on our list is Dr. J. Gary Adcox, TAICS executive  
4 director.

5                   If I could ask the speakers just to  
6 come to the front here and speak -- there's a  
7 microphone or a speaker in front of you. Just if you  
8 could speak clearly so that the court reporter is able  
9 to properly transcribe your comments.

10                  DR. ADCOX: First, I would like to  
11 thank the division staff on behalf of the TAICS  
12 membership for making this hearing possible today  
13 through the procedures prescribed by the Uniform  
14 Administrative Procedures Act.

15                  Although I will not address each  
16 proposed rule change, I will, however, make comment on  
17 the rule or section of the regulation that at this  
18 point continues to concern the membership and requires  
19 readdressing to ensure that what we do here today aids  
20 not only the accomplishing of the goals and mission of  
21 the division and the institutions they oversee but also  
22 serves to aid Tennessee students in achieving their  
23 educational goals.

24                  When the association and its members  
25 received the current proposed rule revisions, we were

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1 pleased and excited that the division had taken a step  
2 forward in addressing a few of the major issues facing  
3 this sector and its regulation. However, after review  
4 of the current version, we are disappointed somewhat in  
5 that some of these key issues have been removed from  
6 consideration and left only minor administrative  
7 changes in the rules.

8                   We are pleased that the division saw  
9 fit to include the changes in language and rule to  
10 support cash discount policy.

11                  We also support the 1540-01-02-26,  
12 Return of Regulatory Fees section in addressing the  
13 return of fees acquired through the overcharging of our  
14 institutions. However, we believe that these fees  
15 still need to be reviewed for a more sensible and  
16 accurate fee based on the division's work.

17                  Changes that were removed. Based on  
18 DPSA's assessment of the rule changes that were  
19 pertinent and time sensitive, we question the removal  
20 of the following changes:

21                  Two of the rule changes that were  
22 removed from this revision after the comment period  
23 fell under Definitions, the proposed change in  
24 accreditation. The association was supportive of  
25 updating the definition to recognize both national and

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1 regional agencies and are perplexed as to why this  
2 revision was removed.

3                 This, much like the removal of the  
4 proposed change 1540-01-02-06, Minimum Authorization  
5 Standards and Requirements, went to correcting unfair  
6 bias toward accreditation. The removal of these two  
7 fundamental changes stripped the proposed rule changes  
8 of any real substance.

9                 Two other proposed changes were  
10 removed from the original identified pertinent and time  
11 sensitive revisions. 1540-01-02-16, Personnel and  
12 Instructor Qualifications, paragraph (3) and paragraph  
13 (12) (b) and (c), both sections dealing with  
14 instructors of trades requiring certification. We are  
15 perplexed by these omissions and would ask that the  
16 DPSA staff address why these were removed and what  
17 makes them now nonpertinent or time sensitive.

18                 Changes that we believe need to go a  
19 little further. Proposed rule changes to  
20 1540-01-02-08, Regulation for Specific School Types,  
21 fails to take the opportunity to advance the goal of  
22 education by not addressing the critical issues of  
23 degree designations. By maintaining this artificial  
24 and arbitrary rule that is counter to the U.S.

25 Department of Education and Institutional Accreditor

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1 standards -- by allowing this to continue, our students  
2 are harmed when attempting to move or transfer to other  
3 public institutions that disallow transfer of credit  
4 from applied science degrees.

5                   Changes needing additional  
6 clarification. Under the current revision, as I  
7 understand it, changes that effect "agent" are designed  
8 for off-campus/off-site enrollment of students, which  
9 would include the completion of an enrollment agreement  
10 and possibly other procedures or use of forms designed  
11 to enroll a student.

12                  And so that leaves me to ask for  
13 clarification. If an individual that is distributing  
14 general institutional information or program  
15 information without the offer of enrollment or use of  
16 enrollment forms, whether theirs or forms from the  
17 State, would this person not be considered an agent  
18 and, therefore, would not need an agent fee?

19                  Changes not addressed. As an  
20 association, we believe that THEC through the division  
21 should make additional changes to the regulations to  
22 address more critical issues effecting this sector. We  
23 believe that the failure to include more appropriate  
24 accreditors within the definition section, which  
25 clearly specifies SACS, an accreditor that the majority

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1 of these schools are not accredited by, indicates a  
2 lack of understanding of the sector by the division.

3                   When you asked for comments, we  
4 submitted a large number I think on behalf of the  
5 sector. I'm not sure how many, but I believe that the  
6 two additions to the initial proposed rule, the seven  
7 grammatical changes, and the four removals from this  
8 shows that the division lacks the response to the  
9 sector's comments and seems to indicate an unauthentic  
10 approach to this process; and although the revision  
11 process certainly meets the letter of the law, it does  
12 not meet the spirit. Those are my comments.

13                   MS. WOODRUFF: Thank you.

14                   Next I have Cyndee Perdue Moore,  
15 National College of Business & Technology, vice  
16 president.

17                   MS. MOORE: I am Cyndee Perdue Moore,  
18 vice president of National College of Business &  
19 Technology.

20                   National College of Business &  
21 Technology appreciates the opportunity to comment on  
22 the proposed revisions to Chapter 1540-01-.02,  
23 Authorization and Regulation of Postsecondary Education  
24 Institutions and their agents. The following comments  
25 are submitted on behalf of the six campuses of National

1 College of Business & Technology currently authorized  
2 by THEC to operate in Tennessee.

3 Let me preface my more specific  
4 comments by saying how hopeful we were when we received  
5 the proposed rules for initial comment in December of  
6 2013. While not all areas of concern were addressed  
7 completely, we did feel as though a first step had been  
8 taken to make meaningful revisions to the rules and  
9 bring them into the 21st Century. We were, therefore,  
10 obviously surprised to see that the final version of  
11 the rules that we were commenting on today had been  
12 stripped of many meaningful and important changes.

13 Although, we do support the addition  
14 of 1540-01-02-.26, Return of Regulatory Fees, and  
15 1540-01-02-.19.51 (sic), Standardized Cash Discounts,  
16 we feel that beyond those changes most of what remains  
17 in the current revisions are a handful of grammatical  
18 and punctuation corrections that do little to enhance  
19 and support our students' future education or career  
20 objectives.

21 While we support the aforementioned  
22 revisions, we must register our opposition to the rules  
23 as presented because they fail to address certain key  
24 areas of concern.

25 Under the area of Definitions, we were

1 encouraged by the verbiage use in the initial proposed  
2 revisions to allow the use of the word "college" in an  
3 institution's name without qualifiers, but we were  
4 perplexed by the failure to change the definition of  
5 "college" in those same revisions.

6                   The current definition which would  
7 remain unchanged in accordance with the initial  
8 proposed revisions, defined "college" as a unit of a  
9 university offering specialized degrees or a  
10 postsecondary institution offering courses of study  
11 leading to traditional undergraduate college degrees.  
12 Some examples of traditional degrees are: Associate of  
13 Arts, Associate of Science, Bachelors of Arts, Bachelor  
14 of Science, and Bachelor of Fine Arts.

15                  As proposed in December,  
16 1540-01-02-.06-14 was rendered meaningless, as  
17 elsewhere in the rules nationally accredited  
18 institutions are strictly prohibited from awarding  
19 traditional degrees. Since by the existing definition,  
20 a "college" is an institution that offers traditional  
21 degrees and by operation of 1540-01-02-.08-3b only  
22 regionally accredited institutions may offer  
23 traditional degrees.

24                  Currently only regionally accredited  
25 institutions are allowed to use the word "college" in

1       their name without qualifiers. we continue to view  
2       this restriction as both arbitrary and capricious,  
3       particularly given that prior proposed revisions  
4       acknowledged the need to change the definition of  
5       "college" to avoid confusion.

6                   In response to that contradiction, we  
7       recommended that either the definition of "college" be  
8       revised to read: "College" means a unit of a  
9       university offering specialized degrees or a  
10      postsecondary institution offering courses of study  
11      leading to a degree or the recommendation relating to  
12      our next comment.

13                  We were dismayed to see in the final  
14      version of these rules that not only had our  
15      recommendation not been considered, but that all  
16      reference to the change was removed.

17                  Further, we feel it is an egregious  
18      oversight not to address 1540-01-02-.08-3b, Degree  
19      Granting Institutions in this revision. This rule  
20      states that no institution may offer traditional  
21      liberal arts degrees or professional degree  
22      designations, such as those given in the definition  
23      under "college" and "university" unless previously  
24      approved by a recognized regional accrediting body.

25                  The United States Department of

1 Education gives authority to accrediting bodies on  
2 equal footing without differentiating between regional  
3 and national accreditors. Both national and regional  
4 accrediting bodies have established guidelines for determining  
5 which degrees meet the standards of a traditional  
6 academic degree.

7 Requiring institutions to artificially  
8 change the names of the degrees they offer from an  
9 academic designation to an applied designation, for  
10 example, an Associate of Science as provided by an  
11 accrediting body as authorized by the USDOE versus an  
12 Associate of Applied Science as determined without  
13 appropriate justification by the Tennessee Higher  
14 Education Commission, is, again, both arbitrary and  
15 capricious.

16 Further, it unfairly penalizes  
17 students who have exercised their choice to attend a  
18 nationally accredited institution by forcing that  
19 institution to award a lesser degree than that which  
20 students earned. Doing harm to the very constituency  
21 that the commission has been charged with protecting  
22 is, at the very least, counterproductive to the  
23 workforce development goals for our state.

24 We recommended via our written  
25 comments in December and we recommend today that this

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1 rule be revised to read: No institution may offer  
2 traditional liberal arts degrees or professional degree  
3 designations such as those given in the definition  
4 under "college" and "university" unless previously  
5 approved to offer academic degrees by an accredited  
6 body recognized by the United States Department of  
7 Education.

8                   we also feel that not addressing  
9 1540-01-02.03pp, Definitions, and 1540-01-02-6-14a,  
10 School Name, is a missed opportunity.

11                   use of the word "university" is  
12 closely tied to each of the rules and definitions  
13 outlined above. Current treatment of the word  
14 "university" is found in Rule 1540-01-02-.03pp and Rule  
15 1540-01-02-6-14a. As written, and with no revisions  
16 proposed, institutions are prohibited from using the  
17 word "university" in their name unless they are  
18 approved by a regional accrediting body so recognized  
19 by the U.S. Department of Education and one that offers  
20 traditional undergraduate and graduate degrees. For  
21 the same reasons stated previously, we feel that the  
22 restriction on the use of the word "university" is both  
23 arbitrary and capricious.

24                   we recommend that the definition of  
25 "university" remain as is, with the definition of a

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1 traditional degree revised to read: No institution may  
2 offer traditional liberal arts degrees or professional  
3 degree designations such as those given in the  
4 definition under "college" and "university" unless  
5 previously approved to offer academic degrees by an  
6 accrediting body recognized by the United States  
7 Department of Education.

8                   We further recommend that  
9 1540-01-02-6-14a be revised to read: No postsecondary  
10 educational institution under the Act and these rules  
11 may use the word "university" in their name unless the  
12 school has been so approved by an accrediting body so  
13 recognized by the U.S. Department of Education.

14                   While we are encouraged by the  
15 inclusion of two new rules which would grant schools  
16 the ability to offer a standardized cash discount and  
17 provide for return of fees, although we feel they are  
18 regressive in nature, we simply feel that these rules  
19 do not go far enough. It's time to bring the rules  
20 governing institutions under the DPSA umbrella into the  
21 21st Century. We feel these rules do not accomplish  
22 that objective.

23                   In closing, we welcome the opportunity  
24 to work with the commission and the DPSA staff to  
25 refine the proposed revisions to best meet the needs of

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1 our schools and the students who choose to further  
2 their education through our schools.

3                   Given Governor Haslam's focus on  
4 education and workforce development through the State's  
5 "Drive to 55" initiative, it's imperative that THEC  
6 support proprietary schools in Tennessee and the  
7 students our school serves. Adopting the changes we  
8 have proposed would best serve that goal. Thank you.

9                   MS. WOODRUFF: Thank you.

10                  Next I have Katharine Purnell from  
11 Daymar, Clarksville, campus president.

12                  MS. PURNELL: Thank you very much. I  
13 don't have anything prepared in writing, but I do just  
14 want to state how in December -- and I reiterate how  
15 pleased I was with the proposed rule changes, and I  
16 replied with an email that was on behalf of all of the  
17 three Daymar Institute campuses, and I'm just very  
18 surprised that those were removed when we got the  
19 revised rules in February. I mean, really shocked.  
20 I'm just shocked and really don't understand it. So  
21 that's all I have to say.

22                  MS. WOODRUFF: Thank you.

23                  Next I have Richard Lodge, Bass,  
24 Berry & Sims, Kaplan counsel.

25                  MR. LODGE: I do not wish to speak.

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1 MS. WOODRUFF: Thank you.

2 Patty Bowman, Genesis Career College,  
3 director of education.

4 MS. BOWMAN: I don't have any  
5 comments.

6 MS. WOODRUFF: Please make sure if  
7 you're speaking without a microphone that you speak up  
8 so that the court reporter can get your comments.

9 I have Mark Liverman, National College  
10 of Business & Technology, campus director.

11 MR. LIVERMAN: I don't have anything  
12 further to say. I completely support Ms. Moore's  
13 comments and Dr. Adcox's comments.

14 MS. WOODRUFF: Rich Blankenship,  
15 National College of Business & Technology, campus  
16 director.

17 MR. BLANKENSHIP: I do not have any  
18 comments. I also support Dr. Adcox and Ms. Moore's  
19 comments.

20 MS. WOODRUFF: Thank you.

21 Peter Powell, DeVry University, campus  
22 director.

23 MR. POWELL: No comments at this time.

24 MS. WOODRUFF: Thank you.

25 Dominick DeLorenzo, Virginia College.

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1                   MR. DELORENZO: DeLorenzo, yes. I  
2 have no other comments other than to say I do support  
3 Dr. Adcox and Ms. Moore's statements fully.

4                   MS. WOODRUFF: Thank you.

5                   Richard -- is it Richard Collier?

6                   MR. COLLIER: Yes, it is.

7                   MS. WOODRUFF: That's the name of a  
8 former boss of mine. I was thrown off, actually.

9                   MR. COLLIER: That's okay. I'm sure  
10 he was a heck of a nice guy, though.

11                  MS. WOODRUFF: Southeastern Institute,  
12 program director.

13                  MR. COLLIER: Yes. I have nothing  
14 more to add either. We're here in support of both  
15 Ms. Moore and Dr. Adcox and their position and feel it  
16 should be given full consideration.

17                  MS. WOODRUFF: Thank you.

18                  Tyson Heath, WGU, Western Governors  
19 University, operations manager.

20                  MR. HEATH: we have no additional  
21 comments at this time.

22                  MS. WOODRUFF: Thank you.

23                  Phil Quintana, University of Phoenix,  
24 associate director of regulatory affairs.

25                  MR. QUINTANA: The University of

THEC RULEMAKING HEARING, 3/27/14

1 Phoenix thanks the department of postsecondary school  
2 authorization for the opportunity to collaborate in the  
3 rulemaking process and for its diligence in promoting  
4 an educational environment which students and  
5 institutions can benefit from a balanced and  
6 professional regulatory oversight.

7 During the past three years over 4,600  
8 Tennessee residents have earned degrees from the  
9 University of Phoenix's six locations and thousands  
10 more are working toward that same goal. We are proud  
11 of their accomplishments and are confident that the  
12 State will benefit from their future contributions, as  
13 well as the contributions of the graduates from our  
14 sister institutions in the sector.

15 While the university is pleased with  
16 and grateful for the professionalism of the department  
17 staff, we feel that one proposed and existing rule,  
18 1540-01-02-.13, Enrollment Agreements and Disclosure  
19 Standards, paragraph 3a goes well beyond what is fair.  
20 This rule requires only schools in this sector to  
21 disclose completion, retention, and placement rates to  
22 potential students in the enrollment agreement, which  
23 is the contract students sign with the institution.

24 State institutions and junior colleges  
25 governed by the Tennessee Board of Regents and private

1 institutions that are members of the Tennessee  
2 independent colleges and university associations do not  
3 have similar disclosure requirements. If the purpose  
4 of the disclosure is to provide a consumer protection  
5 to the residents of the state, it should be applied to  
6 all potential students of all institutions or none at  
7 all.

8 Currently these disclosures as part of  
9 an enrollment agreement apply only to the sector that  
10 regulates out-of-state institutions. Schools which are  
11 regulated by the Department of Postsecondary School  
12 Authorizations. From a basic fairness standpoint, the  
13 university sent the requests to a level playing field  
14 where it was subject to the same disclosure  
15 requirements as the Board of Regents and the Tennessee  
16 Independent Colleges and Universities.

17 The University notes that the  
18 Tennessee Higher Education Commission already discloses  
19 this information to the public on the front page of its  
20 website. This resource is updated annually and  
21 available to anyone with an interest in such  
22 disclosures. The University is supportive of the  
23 remainder of the proposals. Thanks.

24 MS. WOODRUFF: Next I have Crystal  
25 Tyler, Goodwill Middle Tennessee, computer instructor.

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1                   MS. TYLER: Goodwill has no comments  
2 at this time.

3                   MS. WOODRUFF: Thank you.

4                   Haley B. Johnson, Kaplan Career  
5 Institute, executive director.

6                   MS. JOHNSON: No comments at this  
7 time. Thank you.

8                   MS. WOODRUFF: Thank you.

9                   John Carreon, Kaplan, vice president  
10 state affairs.

11                  MR. CARREON: No comments on behalf of  
12 Kaplan at this time.

13                  MS. WOODRUFF: Thank you.

14                  Dax Gomez, Nossi College of Art,  
15 director of career services.

16                  MR. GOMEZ: I have no comments to  
17 make.

18                  MS. WOODRUFF: Thank you.

19                  And, lastly, I have Charles Camp,  
20 Remington College, general counsel.

21                  MR. CAMP: Remington adopts the  
22 comments made by Ms. Moore and Dr. Adcox. Rather than  
23 just repeating those, we will adopt their comments.

24                  MS. WOODRUFF: Okay. Thank you.

25                  That's all I have on the list. Did

THEC RULEMAKING HEARING, 3/27/14

1 anyone come in late that did not get a chance to sign  
2 in?

3 (No response.)

4 MS. WOODRUFF: Okay. Well, if there  
5 are no further comments to be made, that will conclude  
6 our rulemaking hearing. Well, if you have any written  
7 comments, I will be happy to take those now or, you  
8 know, you can submit them by the close of today, but  
9 today was the due date for any written comments.

10 MS. MOORE: And you will take those  
11 via email?

12 MS. WOODRUFF: I will. I prefer to  
13 have them in writing because things do fall through the  
14 cracks sometimes. Not in writing, but hand-delivered,  
15 but if you need to email them to me, I will accept  
16 them.

17 DR. ADCOX: I believe two schools  
18 overnighed comments to you. I'm not sure you received  
19 them or not. Their intent was and said they would  
20 overnight them yesterday, I believe, but I think they  
21 followed up with an email, but I'm not positive. But  
22 you should have two additional comments.

23 DR. BELLARD CHASE: We will check when  
24 we go back.

25 MS. WOODRUFF: Anything further?

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(No response.)

MS. WOODRUFF: All right. We're adjourned. Thank you.

(Proceedings concluded at  
10:28 A.M.)

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1                   REPORTER'S CERTIFICATE

2                   I, Christina A. Meza, Licensed Court  
3 Reporter, Registered Professional Reporter, Certified  
4 Court Reporter, and Notary Public for the State of  
5 Tennessee, hereby certify that I reported the foregoing  
6 proceedings at the time and place set forth in the  
7 caption thereof; that the proceedings were  
8 stenographically reported by me; and that the foregoing  
9 proceedings constitute a true and correct transcript of  
10 said proceedings to the best of my ability.

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

15                  IN WITNESS WHEREOF, I have hereunto affixed  
16 my official signature and seal of office this 31st day  
17 of March, 2014.

18  
19  
20  
21  
22                    
23                  CHRISTINA A. MEZA, LCR, RPR, CCR  
24                  AND NOTARY PUBLIC FOR THE STATE  
25                  OF TENNESSEE



LCR No. 164 Expires 6/30/2014

Notary Commission Expires 6/22/2015



March 26, 2014

Julie M. Woodruff  
Director of Regulatory Affairs & Complaint Resolution  
Tennessee Higher Education Commission  
Parkway Towers, Suite 1900  
404 James Robertson Pkwy  
Nashville, TN 37243-0830

Re: Ashford University and University of the Rockies - Public Comments to the Tennessee Higher Education Commission

Dear Ms. Woodruff:

Thank you for the opportunity to provide public comments to the Tennessee Higher Education Commission's proposed amendments to Chapter 1540-01-02, Authorization and Regulation of Postsecondary Education Institutions and Their Agents. Bridgepoint Education on behalf of its institutions' Ashford University and University of the Rockies submit the enclosed public comments for consideration.

Should you have any questions, please feel free to contact Brittney Lee at 866.475.0317 x 1776 or [Brittney.lee@bpiedu.com](mailto:Brittney.lee@bpiedu.com).

Sincerely,

Vickie L. Schray  
Senior Vice President, Regulatory Affairs & Public Policy

Enclosure

13500 Evening Creek Drive North, Suite 600, San Diego, CA 92128

## Proposed Amendments to Chapter 1540-01-02, Authorization and Regulation of

### Postsecondary Education Institutions and Their Agents

MAR 9 7 2014

Thank you for the opportunity to provide public comments to the Tennessee Higher Education Commission's (Commission) proposed amendments to Chapter 1540-01-02, Authorization and Regulation of Postsecondary Education Institutions and Their Agents. Bridgepoint Education on behalf of its institutions' Ashford University and University of the Rockies respectfully submit the following comments:

- 1) In Section 1540-01-02-.13 Enrollment Agreements and Disclosure Standards, Subsection (3) (a) and (b), the Commission proposes to require institutions to include "in-field placement data as calculated by the Commission" in the enrollment contract or pre-enrollment checklist.

Currently, under Subsection (4), the Commission grants institutions a waiver from Subsection (3) if they do not typically report vocational placement data. We request that the Commission also grant a waiver to institutions that do not have in-field placement services, so that Section 1540-01-02-.13, Subsections (3) and (4) read:

- (3) Also included in the enrollment contract or pre-enrollment checklist, shall be the most recent withdrawal, completion and in-field placement data as calculated by the Commission by including:
    - (a) The following statement: "For the program entitled, (program name), I have been informed that, for the July (year)/June (year) period, the withdrawal rate is (percent)%, the completion rate is (percent)%, and the in-field placement rate is (percent)%. Detailed statistical data for this program may be viewed by going to [www.tn.gov/thecc](http://www.tn.gov/thecc) 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/thecc](http://www.tn.gov/thecc) and clicking on the Authorized Institution Data button."
  - (4) Liberal arts schools or professional schools that typically do not report vocational placement data or do not have in-field placement services may request a waiver of 1540-01-02-.13(3) above.
- 2) As proposed, Section 1540-01-02-.16 Personnel and Instructor, Subsection (1) states:
    - (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 to be provided by the Commission staff, 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.

To ensure a more reasonable timeframe and scope, we suggest the following language instead of the proposed rule:

- (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 to be provided by the Commission staff, no later than ~~ten (10)~~ twenty (20) calendar days after the ~~hire~~ start 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 senior 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.

To conform with the above suggested language, we also recommend revising the definition of “administrative personnel” under Section 1540-01-02-.16 Personnel and Instructor Qualifications, Subsection (3), as follows:

#### **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.
- (2) The method of administration and procedure for staff selection must be defined in a way that each employee has specific duties and responsibilities.

(3) Administrative personnel generally encompasses senior staff and individuals that oversee areas as outlined in operational and administrative standards. This includes by function, but is not limited to titles of an institutional director; financial aid administrator; director of admissions; director of education; business officer or manager; director of student services (including counseling and placement) and the registrar. Support and clerical staff is not included as administrative personnel, but shall be included for reporting purposes on re-authorization forms annually.

3) As proposed, Section 1540-01-02-.16 Personnel and Instructor, Subsection (12)(d)(4)(i) states:

(H12) Instructors:  
...

(d) An instructor must be qualified by education and experience/background demonstrably higher than the level to be taught and must meet the following qualifications as minimum requirements:  
...

4. Minimum for an associate level:

(i) Meet the minimum requirements for doctorate, masters or baccalaureate level; or  
...

We support the Commission's amendment to allow a faculty member to teach at the associate level if s/he meets the minimum requirements for the doctorate, masters or baccalaureate level. This is a sound policy that would give highly qualified faculty the opportunity to teach an associate degree program as long as s/he has the appropriate educational credential.

4) As proposed, Rule 1540-01-02-.19 Fair Consumer Practices and Student Complaints, Section 5 reads as follows:

**(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.**

We would like the Commission to clarify what it considers to be "a discount for cash payment." We currently offer tuition grants to certain student populations, such as military students, in

order to limit the amount of out-of-pocket costs those students might incur if military tuition assistance or employer reimbursement fails to cover their entire cost of attendance. We do not consider these grants to be discounts for cash payments; however, additional clarification in the definition of discounts for cash payments for purposes of this proposed regulation would help us ensure compliance by making the Commission's expectations more clear. As such, for clarification and to ensure correct application of the above proposed rule, we suggest the following language be added:

**For purposes of Section 5, a “discount for cash payment” shall mean a lower tuition charge in exchange for a student paying the institution directly in advance using a credit card or other direct payment method that is not federal financial aid.**

- 5) As proposed, Rule 1540-01-02-.19 Fair Consumer Practices and Student Complaints, Section 6 reads as follows:

**(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.**

We support the Commission's above proposed rule requiring an institution to comply with subsections (a) through (c) as this is a sound policy based on equity and uniformity. However, an institution may also award institutional adjustments to students that are separate from the types of scholarships, tuition waivers and other awards that are referred to above. For instance, there are institutional adjustments, such as awards for corrections, customer service credits, and revisions for operational error, which are given based on an individual student's situation and are made after the fact. These types of awards are not intended to be given to groups of students nor are they made based on eligibility criteria. Rather, they are given on a case-by-case basis in order to make individual students whole following inadvertent discrepancies. Therefore, for clarification and to ensure correct application of the above proposed rule, we suggest the following language be added:

**For purposes of Section 6, a scholarship, tuition waiver or other award does not include internal adjustments, including but not limited to, awards for corrections, customer service credits, and revisions for operational error.**

## **Julie Woodruff**

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**From:** Susan Cooper <scooper@daymargroup.com>  
**Sent:** Thursday, March 27, 2014 2:34 PM  
**To:** Julie Woodruff  
**Subject:** Rulemaking Hearing Comments



  
To: THEC

From: Susan Cooper  
Daymar Colleges Group  
Director of Government Relations

I would like to go on record to say that I am in agreement with Gary Adcox (TAICS) and Cyndee Moore's (National College) comments made this morning at the 10:00am, THEC Rulemaking Hearing.

Thank you for accepting these comments. sc

*Susan Cooper*

Director of Government Relations  
Executive Director Daymar Foundation

Office: 270-926-1188  
Fax: 270-686-8912  
Cell: 270-929-1176

The Daymar Foundation  
*"Helping students...Help themselves"*



168 Jack Miller Blvd.  
Clarksville, TN 37042  
(931) 431-9700  
[www.nci.edu](http://www.nci.edu)

March 25, 2014

Julie M. Woodruff, Esq.  
Director of Regulatory Affairs and Complaint Resolution  
Division of Postsecondary School Authorization  
Tennessee Higher Education Commission  
Parkway Towers, Suite 1900, 404 James Robertson Parkway  
Nashville, TN 37243-0830



RE: 12/6/2013 Email attachment of proposed rule changes of THEC

Dear Ms. Woodruff,

Thank you for taking the time to talk to me today. Unfortunately I cannot attend the meeting on Thursday due to school obligations.

After viewing the proposed rules, North Central Institute (NCI) is in agreement with the “Accreditation” definition, 1540-01-01-.03(1)(c).

Furthermore, NCI would like to see the definition of “Agent” 1540-01-01-.03(1)(e) kept as is, which is now lined out in red. When small schools such as NCI are invited to community events, high school information fairs, and career/college fairs, they are handing out information about educational opportunities in the area and creates good will within the community. Attendance to these events, as the definition currently stands, does not require an agent application or status when the person or persons attending those events have other primary job duties. Changing the definition would create a hardship on small schools and undermines community events.

If there are any questions, comments or concerns, please feel free to contact the undersigned.

Education in Aviation,

Tamela Taliento  
President

/ajw

North Central Institute is accredited by the Commission of the Council on Occupational Education



**Julie Woodruff**