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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 715
HIGHER EDUCATION COORDINATING COMMISSION

FILED

09/26/2018 6:54 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Modifications to Private Career School license fee schedule; Modification to uses of Tuition Protection Fund.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/31/2018 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Public Service Building
255 Capitol Street, 3rd Floor
Salem, OR 97310

Filed By:
Karen Howard
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 10/18/2018

TIME: 1:30 PM - 2:30 PM

OFFICER: Karen Lynne Howard

ADDRESS: Public Service Building,
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SPECIAL INSTRUCTIONS:

1-888-363-4735

Access Code: 9431448

SECOND PUBLIC HEARING

NEED FOR THE RULE(S):

The Higher Education Coordinating Commission (HECC) Private Career Schools (PCS) unit is currently entirely dependent on licensure fees for its operating budget. In previous years, PCS has received partial subsidy from state General Fund revenue. Fee collections have been insufficient to maintain essential operations in areas such as compliance and student and consumer protection. The proposed fee increases, along with other revenue sources, will allow the PCS unit to make new hires critical to these statutorily mandated functions.

The Tuition Protection Fund change will also allow the PCS unit to transfer funds for its critical operations, subject to limits imposed by rule.

Fiscal and Economic Impact:

Effective January 1, 2019, all currently licensed private career schools doing business in the state of Oregon will see a 30 percent increase in their annual fee assessments, as determined by their self-reported gross tuition revenue. Additionally, first time license fees for new schools will increase by approximately 30 percent. Other fees collected by the PCS unit that are set in rule will remain the same.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

A memorandum describing the proposals is available on the agency's web site:

<https://www.oregon.gov/highered/institutions-programs/private/Documents/PCS%20Advisory%20Committee/Special%20Meeting%20Memo%20Aug%202018.pdf>

and a proposed fee schedule is provided:

<https://www.oregon.gov/highered/institutions-programs/private/Documents/PCS%20Advisory%20Committee/PCS%20New%20Fees%20Proposal%20Jul%202018.pdf>

FISCAL AND ECONOMIC IMPACT:

Effective January 1, 2019, all currently licensed private career schools doing business in the state of Oregon will see a 30 percent increase in their annual fee assessments, as determined by their self-reported gross tuition revenue. Additionally, first time license fees for new schools will increase by approximately 30 percent. Other fees collected by the PCS unit that are set in rule will remain the same.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

715-045-0007:

- (1) HECC's Private Career Schools unit will see an increase in fee-based revenue, necessary to maintain its critical operations in compliance and student & consumer protections.
- (2)
 - a. Approximately 200 private career schools will incur an increase of 30 percent in their license renewal fees paid to the state.
 - b. No new reporting or compliance, record keeping or administrative costs
 - c. No new services, supplies, labor or other increased administration costs, other than the fees paid to the state for annual license renewal.

715-045-0029:

- (1) The transfer of funds, subject to limitation in rule, from the TPF to PCS unit operations will sustain critical functions of the unit.

There is no direct fiscal impact related to the change proposed to 715-045-0029 to business owners.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Members of the Private Career Schools Advisory Committee were consulted with the plan, need statement, and expected outcomes of this fee increase in a meeting held July 26, 2018. Members of this Committee are all private career school owners, and all agreed to recommend this fee increase in Oregon Administrative Rule.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The PCS Advisory Committee serves as the statutorily mandated advisory body for the PCS unit, including on matters related to rulemaking.

RULES PROPOSED:

715-045-0007, 715-045-0029

AMEND: 715-045-0007

RULE SUMMARY: 715-045-0007 sets in rule the fee schedule for the licensing of new private career schools operating in the state of Oregon, and those enrolling Oregon students while based in another state. This rule also sets the renewal fee schedule for the licensing of such schools, according to a sliding scale based on gross tuition income.

CHANGES TO RULE:

715-045-0007

License Fees ¶¶

(1)(a) Before issuing a career school license under ORS 345.010 to 345.450, the Executive Director shall collect a nonrefundable, annual license fee based on the fee schedule below in OAR 715-045-0007(1)(c) for In-State Schools and OAR 715-045-0007(1)(d) for Out-of-State Schools.¶¶

(b) For purposes of ORS 345.080, "tuition income" means "gross tuition income," as that term is defined at OAR 715-045-0001 and 715-045-0007.¶¶

(c) In-State Schools: Tuition Income Range - Fee:¶¶

(A) \$0-15,000 - ~~\$780~~1,014;¶¶

(B) 15,001-50,000 - ~~\$1,040~~352;¶¶

(C) 50,001-125,000 - ~~\$1,306~~90;¶¶

(D) 125,001-250,000 - ~~\$1,853~~2,409;¶¶

(E) 250,001-500,000 - ~~\$2,405~~3,126;¶¶

(F) 500,001-750,000 - ~~\$2,958~~3,845;¶¶

(G) 750,001-1,000,000 - ~~\$3,514~~63;¶¶

(H) Over 1,000,000 - The base rate of (G) above plus ~~\$276~~359 for every \$250,000 over \$1,000,000.¶¶

(d) Out-of-state Schools: Tuition Income Range - Fee:¶¶

(A) \$0-50,000 - ~~\$2,405~~3,126;¶¶

(B) 50,001-250,000 - ~~\$2,958~~3,845;¶¶

(C) 250,001-500,000 - ~~\$3,514~~5,63;¶¶

(D) 500,001-750,000 - ~~\$4,063~~5,282;¶¶

(E) 750,001-1,000,000 - ~~\$4,615~~6,000;¶¶

(F) Over 1,000,000 - The base rate of (E) above plus ~~\$276~~359 for every \$250,000 over \$1,000,000.¶¶

(2) Applications for a new license must be accompanied by a nonrefundable application fee of ~~\$4,05~~2,200 for In-State applicants and ~~\$6,07~~5,500 for Out-of-State applicants.¶¶

(a) Notwithstanding the fee schedule detailed in subsections (1)(c) and (1)(d), if an applicant for a career school license received its application from the commission prior to the effective date of this rule, the applicant shall pay the license fee listed on the application.¶

(3) The Commission shall collect a nonrefundable fee of \$12 to conduct a search of a closed career school's transcripts and, if any are found, provide four copies of a former student's transcript. If more than four copies are requested, the requestor shall pay a nonrefundable fee of \$2 for each additional copy.¶

(4) Teacher registration applications shall be accompanied by a nonrefundable application fee of \$75.¶

(5) Requests to verify a teacher's registration, training, or experience shall be accompanied by a nonrefundable verification fee of \$25.¶

(6) Applications for teacher trainee registrations must be accompanied by a nonrefundable registration fee of \$7.¶

(7) Requests to determine whether an out-of-state applicant for a cosmetology license is qualified to take a test of the Board of Cosmetology shall be accompanied by a nonrefundable review fee of \$25.¶

(8) The Commission shall collect a nonrefundable fee of \$100 for processing:¶

(a) Career school license renewal applications submitted after the applicable due date established in OAR 715-045-0062. This fee shall be in addition to any civil penalties that may be assessed for renewal applications that are not submitted in compliance with the requirements of OAR 715-045-0062 and any other applicable rules.¶

(b) Payments to the Tuition Protection Fund established under ORS 345.110 after the due dates established in OAR 715-045-0029. This fee shall be in addition to any civil penalties that may be assessed for payments to the Fund that are not submitted in compliance with the requirements of OAR 715-045-0029 and any other applicable rules.¶

(9) The Commission shall collect the annual, nonrefundable cosmetology school inspection fee of \$100 established in ORS 345.450 from schools teaching hair design, barbering, esthetics, or nail technology. This inspection fee shall be transferred to the Health Licensing Office.¶

(10)(a) The Commission shall assess a nonrefundable fee of \$200 for investigations of career schools when the commission determines that a career school has violated any provision of ORS 345.010 to 345.450, or any rule adopted pursuant to ORS 345.010 to 345.450.¶

(b) If the Commission must engage an individual or business, such as a forensic accountant or an attorney, for assistance in conducting an investigation, then the commission shall assess a nonrefundable fee in an amount equal to the investigative costs incurred by the commission; however, the amount of the fee may not exceed \$5,000.¶

(11) Applications for a new program must be accompanied by a nonrefundable application fee of \$1,000 for each new program submitted for review and approval which was not offered at the time of the career school's initial application to the Commission.

Statutory/Other Authority: ORS 345.080

Statutes/Other Implemented: ORS 345.080

AMEND: 715-045-0029

RULE SUMMARY: 715-045-0029 sets for the funding levels, uses, and administrative approval processes around the Tuition Protection Fund (TPF). TPF was established with the purpose of refunding lost tuition paid for education by students to schools that have ceased operations or lost their licensure.

CHANGES TO RULE:

715-045-0029

Tuition Protection Fund ¶

(1) There shall be a fund known as the Private Career School Tuition Protection Fund (as described in ORS 345.110). The Tuition Protection Fund is hereby established in the custody of the State Treasurer. The Executive Director of the Higher Education Coordinating Commission shall deposit in the fund all monies received under this rule. Monies from the fund shall be spent only for the purposes under this rule. Disbursements from the fund shall be on authorization from the commission and no appropriation is required for such disbursements. All earnings on investments of the fund shall be credited to the fund. To be and remain licensed, each private career school authorized in accordance with the provisions of ORS Chapter 345 shall pay to the state an initial capitalization deposit and 14 semiannual payments. The fund shall be initially capitalized at a minimum of \$200,000 and shall achieve and maintain an operating balance of at least \$1 million. Said fund is intended to be a fund of last resort.¶

(2) Purpose of the fund:¶

(a) Students attending schools licensed by the State of Oregon, other than students covered by another state's tuition protection, may apply to the commission, when a school ceases to provide educational services, for a refund of tuition from the fund established pursuant to this rule to the extent that such fund exists or has reached the level necessary to pay outstanding approved claims. The liability of the fund for claims against the school shall not exceed the total amount of the liability limit assigned to the school under subsection (3)(a) of this rule. Such limitation on each school's liability remains unchanged by single or cumulative disbursements made on behalf of the school. If the commission's executive director finds that a student is entitled to a refund of tuition, the executive director shall determine the amount of refund based on criteria established by the commission;¶

(b) The commission shall direct the State Treasurer to pay the refund on behalf of the student to the student and/or the student's financial sponsor(s). If the student is a minor, payment shall be made to the student's financial sponsor(s). Each recipient of a tuition refund shall, as a condition for receiving the claim, assign all rights to the commission of any action against the school or its owner(s) for tuition amounts reimbursed pursuant to this section;¶

(c) Upon such assignment, the executive director shall take appropriate action against the school or its owner(s) in order to reimburse the Tuition Protection Fund for any expenses or claims that are paid from the fund and to reimburse the commission for the reasonable and necessary expenses in undertaking such action;¶

(d) The executive director shall attempt to recover from the school all funds disbursed from the Tuition Protection Fund and other costs of recovery;¶

(e) The Tuition Protection Fund shall not be used to reimburse private party attorney fees;¶

(f) Under no circumstances will any party, person or entity, other than the commission, be allowed to access funds from the Tuition Protection Fund; and¶

(g) No liability accrues to the State of Oregon from claims made against the fund.¶

(3) Establishment of fund liability limits:¶

(a) The amount of liability that can be satisfied by this fund, on behalf of each individual school licensed under this rule, shall be based on the gross tuition income reported on the last license renewal application: [Table not included. See ED. NOTE]¶

(b) The calculation of gross annual tuition for a school located outside the State of Oregon shall include only that income derived from residents of this state during the school's preceding year of operation, as evidenced in the financial statement required by OAR 581-045-0032;¶

(c) Institutions not yet in operation or otherwise lacking a full year's financial data prior to initial licensing, shall

have a liability limit calculated on the basis of an estimation of gross annual tuition;¶

(d) Each school subject to this rule shall submit to the commission in cash or by check or money order, the following nonrefundable* amounts for its initial capitalization deposit into the Tuition Protection Fund: [Table not included. See ED. NOTE]¶

(e) After the date of its nonrefundable initial capitalization deposit, as a condition to remaining licensed, each school shall remit to the commission for deposit into the Tuition Protection Fund semiannual payments (on January 31 and July 31) in cash or by check or money order, in accordance with the schedule in subsection (3)(d) of this rule. If the semiannual payment is not postmarked (or date stamped if hand delivered to the Department) before or on the due date, the commission may impose a civil penalty as allowed under ORS 345.995 and OAR 715-045-0190. Failure of a school to make payment within 30 days of due date shall be grounds for suspension or revocation of the school's license; and¶

(f) The executive director shall prepare and mail to each licensee semiannual notices of the due dates and amounts of deposits required under subsection (3) of this rule. Each notice shall include therein at least once each year:¶

(A) A notation showing the licensee's aggregate prior deposits into the fund;¶

(B) A notation showing the licensee's balance of remaining payments based on the most recent deposit received;¶

(C) A notation showing the cumulated balance existing in the fund at the most recent half-year accounting; and¶

(D) A summary showing all disbursements made from the fund to satisfy claims in the period since the last such similar summary was disseminated.¶

(4) After disbursements made to settle claims reduce the operating balance below \$500,000, and recovery of such funds has not been ensured by the affected school within 30 days, the commission shall assess each licensee a pro rata share of the amount required to restore the balance in the fund to \$500,000. When calculating each share, the commission shall employ a pro rata percentage of liability. If the amount of any single such assessment equals or is less than the semiannual amount of deposit established for the licensee, the assessment shall be paid within 30 days of notice. If any single assessment exceeds the amount of its semiannual deposit, the school may apply to the commission for a schedule of deferred payments. The commission shall grant such deferrals on application, but in no case shall the time extended exceed one year beyond the date of an assessment.¶

(5) The executive director shall determine, based on annual financial data supplied by the school, whether the semiannual deposit assigned to the school on the matrix established under subsection (3) has changed. If an increase or decrease has occurred, a corresponding change in the semiannual deposit shall be made before the date of its next scheduled deposit into the fund.¶

(6) When any ownership interest in a school is conveyed through sale or other means that results in the transferee (buyer) owning more than 50 percent of the school, the contribution schedule of the prior owner is canceled. All contributions made up to the date of the transfer accrue to the fund. The new owner commences contributions under provisions applying to a new applicant. Exception shall be granted to any transferee (buyer) who held more than 50 percent of the ownership interest prior to the transfer and to any transferee who owned any interest in the school for more than four years prior to the transfer. In such instances the transferee (buyer) shall provide the executive director with legal evidence to validate the percent and time period of ownership.¶

(7) When deposits total in the Tuition Protection Fund equal or exceed \$1,000,000, the Commission may transfer the amount in excess of \$1,000,000 as necessary to support the critical operational needs as determined by the Commission, of the unit of the Commission responsible for licensing and regulating private career schools.¶

(a) Transfers for this purpose shall not exceed \$200,000 in a single biennium.¶

(b) The Executive Director shall authorize any transfers made under this provision.¶

(c) The Commission shall notify any preexisting committees convened to advise the Director of Private Postsecondary Education on private career school matters that a transfer has been made no later than the first meeting of such committee after the transfer has been authorized. 8) When deposits in the Tuition Protection Fund equal or exceed \$3,000,000, and the history of disbursements so warrants, the commission may reduce the

schedule of deposits whether as to time, amount, or both. When such level is achieved, the commission may return any excess funds to currently licensed schools that have completed their required contributions to the fund.¶

(89) Additional procedures established to deal with a school that ceases to provide educational services:¶

- (a) A school ceases to provide educational services when the school or a division of the school ceases to provide classes or instruction;¶
- (b) The executive director shall attempt to notify all potential claimants within 60 days of the date the executive director determines a school has ceased to provide educational services. The absence of records and other circumstances may make it impossible or unreasonable for the executive director to ascertain the name and address of each potential claimant, but the executive director shall make reasonable inquiries to secure that information from all likely sources including but not limited to public notification. The notification to students shall inform them of the opportunity and the deadline for submitting claims against the Tuition Protection Fund;¶
- (c) Claims against the Tuition Protection Fund may be made only by students who were enrolled at the time a school ceases to provide educational services;¶
- (d) All claims must be filed with the commission by the deadline established in the executive director's notification. Each student filing a claim must specify and verify any and all sources and amounts of tuition that were paid on the student's behalf. The commission may refuse to pay any claim that does not contain sufficient verification or other information required by the executive director;¶
- (e) The executive director shall not consider any claims filed after the deadline established in the executive director's notification. Failure of a student to receive notification shall not be a basis for the commission to consider any claims filed after the deadline;¶
- (f) The executive director shall seek to recover such disbursed funds from the assets of the defaulted school, including but not limited to asserting claims as a creditor in bankruptcy proceedings; and¶
- (g) A school shall have no vested right, claim or interest in any deposit to the Tuition Protection Fund and all payments shall accrue to the fund.¶
- ~~(910)~~ In the event of a potential and actual school closure a school shall inform its students in writing of their rights under the provisions governing the Tuition Protection Fund.¶
- ~~(101)~~ If a school closure is in violation of OAR 715-045-0067, the commission may allocate monies from the Tuition Protection Fund, as a fund of last resort, to teach-out arrangements for displaced students. The liability level for teach-out costs shall be the same as that established in subsection (3) of this rule. Students signing a written agreement as a result of this option would not be entitled to a refund from the school or the Tuition Protection Fund.¶

[ED. NOTE: Tables referenced are available from the agency.]

Statutory/Other Authority: ORS 345.110, ORS 345.995

Statutes/Other Implemented: ORS 345.110