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PERMANENT ADMINISTRATIVE ORDER

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HIGHER EDUCATION COORDINATING COMMISSION

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FILING CAPTION: Modification to uses of Tuition Protection Fund

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AMEND: 715-045-0029

RULE TITLE: Tuition Protection Fund

NOTICE FILED DATE: 10/24/2018

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.

RULE TEXT:

(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 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.
(9) 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.
(10) 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.
(11) 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.

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

STATUTORY/OTHER AUTHORITY: ORS 345.110, 345.995

STATUTES/OTHER IMPLEMENTED: ORS 345.110