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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

HECC 2-2020
CHAPTER 715
HIGHER EDUCATION COORDINATING COMMISSION

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FILING CAPTION: Providing licensure and regulatory flexibility to licensed schools in response to COVID-19.

EFFECTIVE DATE: 04/10/2020 THROUGH 10/06/2020

AGENCY APPROVED DATE: 04/09/2020

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NEED FOR THE RULE(S):

The rules are required to provide flexibility to schools whose operations are significantly but temporarily impacted by Coronavirus.

JUSTIFICATION OF TEMPORARY FILING:

The Coronavirus emergency and related medically necessary restrictions and interventions were unforeseen, immediate, wide-ranging, and disruptive to student experiences in higher education.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

N/A

RULES:
715-045-0007, 715-045-0029, 715-045-0062

AMEND: 715-045-0007

RULE TITLE: License Fees

RULE SUMMARY: The rule establishes license fees and provides for a no-cost license extension process for periods when school operations may be restricted due to emergency declarations and executive orders.

RULE TEXT:
(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 — $1,014;
(B) 15,001–50,000 — $1,352;

(C) 50,001–125,000 — $1,690;
(D) 125,001–250,000 — $2,409;
(E) 250,001–500,000 — $3,126;
(F) 500,001–750,000 — $3,845;
(G) 750,001–1,000,000 — $4,563;
(H) Over 1,000,000 — The base rate of (G) above plus $359 for every $250,000 over $1,000,000.
(d) Out-of-state Schools: Tuition Income Range — Fee:
(A) $0–50,000 — $3,126;
(B) 50,001–250,000 — $3,845;
(C) 250,001–500,000 — 4,563;
(D) 500,001–750,000 — $5,282;
(E) 750,001–1,000,000 — $6,000;
(F) Over 1,000,000 — The base rate of (E) above plus $359 for every $250,000 over $1,000,000.
(2)(a) Applications for a new license must be accompanied by a nonrefundable application fee of $5,200 for In-State applicants and $7,500 for Out-of-State applicants.
(b) 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)(a) The Executive Director may temporarily extend the expiration date of a license already issued upon request by a licensed school provided Oregon is under a declaration of emergency or executive order that the Executive Director, in their discretion, believes impairs the ability of a school to renew a license and remit the associated fee. An extension shall be for a period of three months from the initial expiration date and may be renewed for a period of time not exceeding one year provided such declaration of emergency or executive order remains in effect at the time the extension is issued.
(b) A school granted a license extension pursuant to this section shall submit to the Executive Director all required license renewal materials, except for license fees, at the time required pursuant to the terms of their license as though it was not extended.
(c) Notwithstanding the provisions of subsections (a) and (b) of this section limiting the renewal of license extensions, if a license extended pursuant to this section expires fewer than 90 days from the day the Governor, through repeal or further executive action, cancels any applicable declaration of emergency or executive orders, the license shall automatically be further extended and shall expire 90 days after such repeal or executive action.
(d) Upon expiration of a license extended pursuant to this subsection, the Executive Director shall collect a nonrefundable fee as published in this rule and, provided all requirements are met, shall issue a license that expires one year from the date of expiration of the license previously issued, as though it was not extended.

STATUTORY/OTHER AUTHORITY: ORS 345.080

STATUTES/OTHER IMPLEMENTED: ORS 345.080

AMEND: 715-045-0029

RULE TITLE: Tuition Protection Fund

RULE SUMMARY: Establishes the Tuition Protection fund and requirements related to schools making payments to the fund.

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 715-045-0032;

(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, check, money order, or electronic payment as

allowed by law, 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, check, money order, or electronic payment as allowed by law, 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.
(12) (a) In the event the Governor issues a declaration of emergency or executive orders that order or directly lead to the temporary cessation of educational activity by a school required to make payments for the Tuition Protection Fund, the Commission, at its discretion, may provide for such payments to be deferred without interest or penalty. Payments may be deferred under this provision for three months, renewable for a period not to exceed one year.
(b) Should the Governor, through repeal or further executive action, cancel any applicable declaration of emergency or executive orders, any deferrals issued under this subsection shall be extended or reduced as required to expire 90 days from such cancellation.
[NOTE: Tables referenced are available from the agency.]

STATUTORY/OTHER AUTHORITY: ORS 345.110, 345.995

STATUTES/OTHER IMPLEMENTED: ORS 345.110

AMEND: 715-045-0062

RULE TITLE: Application for Private Career School License Renewal

RULE SUMMARY: Provides for the application process for license renewal for private career schools and the process by which the commission may grant an extension of a current license during pending license renewals.

RULE TEXT:

(1) Each school shall annually renew its license. At least 60 calendar days prior to the anniversary date of its license, the school must file with the Higher Education Coordinating Commission a completed application for license renewal, including:

(a) Current financial reports as required by OAR 715-045-0032;

(b) Financial report certification form signed by the school's owner or chief administrative officer;

(c) A current and accurate enrollment agreement or contract;

(d) A copy of the catalog that will be in effect for the instructional year that commences during the reporting period for which the license is being renewed. The catalog submission must include an indication of changes that have been made to the structure or wording of the catalog contents;

(e) A copy of any student handbook, addendums, or supplements to the school catalog, and any additional policies and requirements provided to the student that will be in effect for the instructional year that commences during the reporting period for which the license is being renewed. Submission of these materials must include an indication of changes that have been made to the structure or wording of these materials as previously approved by the Department;

(f) Copies of any advertising materials used to recruit new students;

(g) Affidavit of ownership form, signed by all owners holding more than 10% ownership in the school, or by the chief corporate officer (other than the campus president) for publicly held companies;

(h) Affidavit of non-delinquency for student refunds, signed by the school owner or chief administrative officer, as described by OAR 715-045-0032(1)(f);

(i) Student enrollment, completion, and placement information as described in subsection (3) of this rule;

(j) Roster of all instructional staff utilized during the reporting period with dates of service and gross earnings paid;

(k) Information regarding changes to the instructional design as described in subsection (4) of this rule;

(l) License renewal fee and any outstanding penalties, late fees, or other charges owing to the commission.

(2) If a school has been licensed for three years or more and there are no changes in the school's structure, the commission's executive director may allow the school to submit an abbreviated renewal application that confirms the school's compliance with applicable Oregon Revised Statutes and Oregon Administrative Rules. Such abbreviated renewal application shall include the required renewal fee.

(3) The school must provide the following information on the forms provided by the commission for the reporting period:

(a) Names and enrollment information for all students continuing from the prior enrollment period;

(b) Names and enrollment information for all students who enrolled in the program during the reporting period;

(c) Names and enrollment information for all students who left the program without completing it during the reporting period;

(d) Names and enrollment information for all students who transferred between programs during the reporting period;

(e) Names and enrollment information for all students who were graduated from the program during the reporting period; and

(f) Names of those who graduated and were placed or are working in directly related occupations during the reporting period, along with employer information.

(4) If any changes have occurred in the instructional design for any course or program during the previous reporting period or changes are anticipated during the new reporting period, these changes will be submitted to the commission for review and approval.

(5) If the applicant school accepts enrollment of minors, or employs agents who have contact with persons under the age

of 18 on behalf of the applicant school, the provisions of OAR 715-045-0003 will apply to any subject individuals the school currently employs or proposes to hire.
(6) An application for renewal of license shall be considered late if not postmarked (or date stamped if hand delivered to the commission) before or on the due date. The executive director, as allowed under ORS 345.995 and OAR 715-045-0190, may impose a late fee for each calendar day the renewal application is late. Such fees, where applicable, shall be included with the renewal application.
(7) The commission may invoke license suspension as defined in OAR 715-045-0001 and begin license revocation procedures when:
(a) A school fails to submit the application for license renewal by the due date as described in subsection (1) of this rule;
(b) The application does not include accurate or adequate, or complete materials necessary for license renewal; or
(c) The school has been issued a notice for corrective action and is not making satisfactory progress to comply with all provisions of the program improvement plan.
(8) License renewal may be denied when a renewal application is incomplete or received by the commission less than 30 days before the license expiration date, except that the Executive Director may grant an extension of the current license pending completion of the renewal application if requested by the school. Pursuant to ORS 183.484, denial of license renewal on these grounds is an order in other than a contested case. Appeal of the decision to deny may be made by written request to the Circuit Court within 60 days of the issuance of the denial order.
(9) The executive director may conditionally approve a license renewal providing a school agrees to a program improvement plan acceptable to the executive director. Conditional license approval shall be subject to the provisions of ORS 345.030(8). The conditional license issued by the commission shall include the period and dates of effectiveness of the license.

STATUTORY/OTHER AUTHORITY: ORS 345.030

STATUTES/OTHER IMPLEMENTED: ORS 345.030, 2017 Oregon Laws Chapter 422