

NEBRASKA ADMINISTRATIVE CODE

TITLE 281 – COORDINATING COMMISSION FOR POSTSECONDARY EDUCATION

CHAPTER 8 – GUARANTY RECOVERY CASH FUND

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001. GENERAL INFORMATION.

001.01 Statutory Authority. This chapter is adopted pursuant to Neb. Rev. Stat. § 85-2422 et seq.

001.02 Scope of this Chapter. This chapter provides the procedures for the administration of the Guaranty Recovery Cash Fund.

001.03 Related Chapter. Chapter 7 of Title 281 of the Nebraska Administrative Code provides the procedures for the authorization of for-profit postsecondary institutions to operate in Nebraska. Copies of these related regulations are available from the Coordinating Commission for Postsecondary Education or can be found on the Commission's website.

002. DEFINITIONS. As used in this chapter:

002.01 Act means the Postsecondary Institution Act.

002.02 Assessment means the amount a *for-profit postsecondary institution* is required to pay into the *Guaranty Recovery Cash Fund* based on one-tenth of one percent (.001) of the *assessment year's gross tuition revenue*.

002.03 Assessment year means the institution's most recently completed fiscal year.

002.04 Authorization to operate means either an authorization to operate on a continuing basis or a recurrent authorization to operate as approved by the *Commission*.

002.05 Branch facility means a facility in Nebraska (a) which is separate from a *principal facility*, (b) which offers a full program and full student services, (c) which is under the supervision of an onsite director or administrator, and (d)(i) the ownership, management, and control of which are the same as the *principal facility*, which *principal facility* is responsible for the delivery of all services, or (ii) at which education is offered by a franchisee of a franchisor authorized to operate as a postsecondary institution by the *act*.

002.06 Claim means a written request for refund or reimbursement filed with the *Commission* by (a) a student who alleges to be injured by the *termination of operations* of a *for-profit postsecondary institution*, or (b) by the University of Nebraska to recover expenses incurred in the course of complying with its duties under 85-173 and 85-174 in the event of the termination of operations of a *for-profit postsecondary institution*, or (c) by the *Commission*, on behalf of the State of Nebraska, for reimbursement of distributed but unreturned Nebraska Opportunity Grant awards in the event of the termination of operations of a *for-profit postsecondary institution*.

002.07 Claimant means (a) a student who files a claim for reimbursement as a result of alleged injury by the *termination of operations of a for-profit postsecondary institution*, or (b) the University of Nebraska if filing a claim for reimbursement of expenses incurred in the course of complying with its duties under 85-173 and 85-174 in the event of the termination of operations of a *for-profit postsecondary institution*, or (c) by the *Commission*, on behalf of the State of Nebraska, for reimbursement of distributed but unreturned Nebraska Opportunity Grant awards in the event of the termination of operations of a *for-profit postsecondary institution*.

002.08 Class means a course that, if successfully completed, can be applied toward the number of courses required for achieving a postsecondary degree, diploma, certificate, or other formal award.

002.09 Commission means the Coordinating Commission for Postsecondary Education.

002.10 Executive Director means the *Executive Director* of the *Commission* or his or her designee.

002.11 Fee means a fixed charge for, but not limited to, registration fee, lab fees and the cost of materials, or equipment, if they are designated as fees by the institution.

002.12 For-profit postsecondary institution means any private *postsecondary institution* that is not exempt for federal tax purposes under section 501(c)(3) of the Internal Revenue Code as defined in Neb. Rev. Stat. § 49-801.01.

002.13 Fund means the Guaranty Recovery Cash Fund.

002.14 Gross tuition revenue means the total *tuition* and *fees* received during the *assessment year*, less *tuition* and *fees* refunds, received by a *principal facility* or *branch facility* located in this state.

002.15 Guaranty Recovery Cash Fund means a fund established from the *assessments* of *for-profit postsecondary institutions* for use in settling *claims* due to *termination of operations* of a *for-profit postsecondary institution*.

002.16 Maximum fund level means the amount specified in Neb. Rev. Stat. § 85-2423(1).

002.17 Minimum fund level means the amount specified in Neb. Rev. Stat. § 85-2423(1).

002.18 Postsecondary institution means any institution with a physical presence in Nebraska that provides postsecondary education and is exempt from the Private Postsecondary Career School Act.

002.19 Principal facility means the primary physical presence in Nebraska of a postsecondary institution.

002.20 Recurrent authorization to operate means approval by the *Commission* to operate a postsecondary institution in this state, including establishing a new campus or an administrative office, until a renewal of such authorization is required.

002.21 Student injured by the termination of operations by a for-profit postsecondary institution means (i) a student who has paid *tuition* and *fees* to the institution for which classes were offered but not finished due to termination of operations, (ii) a student who has paid *tuition* and *fees* to the institution for which classes were not offered and no refunds were made, or (iii) a student who ceased to be enrolled in classes at an institution while the institution was in operation and to whom a refund of *unearned tuition and fees* became due from the institution after the institution terminated operations and no refunds were made within the institution's required time period following the student's withdrawal from the institution.

002.22 Termination of operations means the act of a for-profit postsecondary institution ceasing to offer all of its educational classes to the public.

002.23 Tuition means money charged for instruction.

002.24 Unearned tuition and fees means money paid by an individual to an institution for classes which will be held in a future attendance period and for classes which are no longer available due to *termination of operation* of the institution.

003. PROCEDURES FOR THE ADMINISTRATION OF THE FUND.

003.01 Except as provided under section 003.04, each *for-profit postsecondary institution* authorized to operate in the state ~~shall~~ **must** pay into the *fund* in each *assessment year*, an amount equal to one-tenth of one percent (.001) of the institution's *gross tuition revenue* for the *assessment year* until the *fund* reaches the *minimum fund level*.

003.02 All payments made into the *fund* ~~shall~~ **must** be maintained by the State Treasurer and deposited into the *Guaranty Recovery Cash Fund*.

003.02(A) The assets of the *fund* may not be expended for any purpose except as provided under section 005 of this rule.

003.02(B) The *fund* ~~shall~~ **must** be administered by the Commission.

003.02(C) The fund ~~shall~~ **must** be maintained between the *minimal fund level* and *maximum fund level*.

003.02(D) At any time when the fund drops below the *minimum fund level*, the Commission may resume the *assessment*.

003.02(E) Funds in excess of the *maximum fund level* ~~shall~~ **must** be used as directed by the Commission to provide grants or scholarships for students attending *for-profit postsecondary institutions* in Nebraska as provided under section 006.

003.03 Payment into the *fund* ~~shall~~ **must** be made in the form of a company or cashier's check or money order made payable to the "Coordinating Commission for Postsecondary Education" and received no later than 30 days after the *assessment year*.

003.03(A) The *for-profit postsecondary institution* ~~shall~~ **must** certify on forms provided by the *Commission* that the institution maintains for five years a verifiable set of records which document the reported *gross tuition revenue* collected and shall make such records available to the *Commission* on request. Any such records made available to the *Commission* may be withheld from the public to the extent allowed by Neb. Rev. Stat. § 84-712.05. A copy of the form to be used may be found on the *Commission* website.

003.03(B) At the time of payment of the *assessment*, the *for-profit postsecondary institution* ~~shall~~ **must** submit to the *Commission* documentation supporting the *gross tuition revenue* used in calculating the *assessment* under section 003.01.

003.04 A *for-profit postsecondary institution* applying for an initial *recurrent authorization to operate* from the *Commission* after September 1, 2017, ~~shall~~ **must** not be assessed in its first fiscal year but ~~shall~~ **must** be assessed each year thereafter for four years or until the fund reaches the *minimum fund level*, whichever occurs last.

003.05 A *for-profit postsecondary institution* applying for an initial *recurrent authorization to operate* from the *Commission* after September 1, 2017, may be required to file with the *Commission* a security bond or other surety agreement ~~equivalent to the projected highest annual tuition revenue collected by the institution over the five years subsequent to the approval granted by the Commission to operate in Nebraska. This requirement may be met by:~~

003.05(A) A good and sufficient surety bond ~~in the penal sum of twenty thousand dollars (\$20,000).~~

003.05(B) Other surety agreements acceptable to the *Commission* include only the following:

003.05(B)(i) ~~Twenty thousand dollar (\$20,000) An e~~ Escrow account ~~that which~~ provides the *Commission* with a recourse against the assets in the account as it would have against an insurance company on a bond. The terms on such an account would be the same as the terms on a bond.

003.05(B)(ii) ~~Twenty thousand dollar (\$20,000) An~~ Irrevocable Letter of Credit from a bank, made payable to the State of Nebraska and deposited with the *Commission*. The Irrevocable Letter of Credit will be released to the institution a year after the institution has ceased to be in operation, or immediately when replaced by another instrument with a similar amount.

003.05(C) The bond or agreement ~~shall~~ **must** be executed by the applicant as principal and by a surety company qualified and authorized to do business in the state. The bond or agreement ~~shall~~ **must** be conditioned to provide indemnification to any student or enrollee or his or her parent or guardian determined to have suffered loss or damage by the termination of operations by the *for-profit postsecondary institution*. The surety ~~shall~~ **must** pay any final judgment rendered by any court of this state having jurisdiction upon receipt of written notification of the judgment. Regardless of the number of years that such bond or agreement is in force, the aggregate liability of the surety thereon ~~shall~~ **must** in no event exceed the penal sum of the bond or agreement. The bond or agreement may be continuous.

003.05(D) Until the Guaranty Recovery Cash Fund initially reaches the *minimum fund level*, the bond or other security agreement of an institution ~~shall~~ must cover the period of the *recurrent authorization to operate* except when a surety is released as provided under section 003.05(E).

003.05(E) A bond or other security agreement may be released after such surety serves written notice on the *Commission* thirty days prior to the release. Such release ~~shall~~ must not discharge or otherwise affect any *claim* previously or subsequently filed by a student or enrollee or his or her parent or guardian provided for under section 004 for the termination of operations by the *for-profit postsecondary institution* during the term for which *tuition* has been paid while the bond or agreement was in force.

003.05(F) During the term of the bond or agreement and upon forfeiture of the bond or agreement, the *Commission* retains a property interest in the surety's guarantee of payment under the bond or agreement which is not affected by the bankruptcy, insolvency, or other financial incapacity of the operator or principal on the bond or agreement.

004. FILING OF CLAIMS. A *claim* may be filed only if it arises out of the *termination of operation* by a *for-profit postsecondary institution* on or after September 1, 2017. Claims by students who ceased to be enrolled in classes which continued to be offered by an institution after the student ceased enrollment are not eligible claims.

004.01 Claims ~~shall~~ must be filed with the *Commission* within one (1) year after *termination of operation* of an institution. Claims filed after one (1) year ~~shall~~ must not be considered.

004.02 Claims ~~shall~~ must be in writing on forms provided by the *Commission* and must be forwarded to the Coordinating Commission for Postsecondary Education. Claim forms to be used may be found on the *Commission* website.

004.03 Claims ~~shall~~ must be accompanied by documents such as receipts, canceled checks, or executed enrollment agreements which verify payment of *tuition* and *fees*.

004.04 Where appropriate documentation is not provided and the availability of documentation is beyond the control of the claimant, the validity of the *claim* may be determined based on the available evidence.

004.05 Following receipt of the *claim* by the *Commission*, the *Executive Director* or his or her designee(s) may investigate and ~~shall~~ must review the *claim* and the *Executive Director* ~~shall~~ must make written recommendations regarding the *claim* to the *Commission*. In arriving at the recommendations, the *Executive Director* or his or her designee(s) may request that a *claimant* submit additional documentation, explanation, and/or meet with the *Executive Director* or his or her designee(s). A copy of the *Executive Director's* written recommendations to the *Commission* ~~shall~~ must be mailed to the *claimant* by certified mail with return receipt requested.

004.06 If the *claimant* disagrees with the *Executive Director's* written recommendations, he or she ~~shall~~ must have an opportunity to submit written comments and/or documentation with the *Commission* within fifteen (15) days following receipt of the written recommendations. The *Commission* ~~shall~~ must consider both the *Executive Director's* written recommendations and the *claimant's* submission in rendering its decision on the disputed claim. The *Commission's* decision ~~shall~~ must be final.

004.07 If the claimant declines to seek review of the *Executive Director's* recommendations within the timeframe set out in section 004.06, the *Commission* may act on the recommendations of the *Executive Director* without further notice to the claimant.

005. DISBURSEMENT OF FUND. The purpose of the *fund* is to pay *claims* authorized pursuant to Neb. Rev. Stat. § 85-2426.

005.01 Money in the Guaranty Recovery fund ~~shall~~ **must** be used in the following order of priority:

005.01(A) To reimburse any *student injured by the termination of operations by a for-profit postsecondary institution* on or after September 1, 2017, for the cost of *tuition and fees*;

005.01(B) To reimburse any former student of a *for-profit postsecondary institution* that has terminated operations on or after September 1, 2017, for the cost of obtaining such student's student records;

005.01(C) To reimburse the University of Nebraska for reasonable expenses directly associated with the storage and maintenance of academic records pursuant to Neb. Rev. Stat. §§ 85-173 and 85-174 of those students adversely affected by termination of operations by a *for-profit postsecondary institution*; and

005.01(D) To reimburse the Nebraska Opportunity Grant Fund for any funds distributed to a *for-profit postsecondary institution* for an academic term that was not completed by students receiving awards under the Nebraska Opportunity Grant Act due to the *termination of operations* by a *for-profit postsecondary institution* on or after September 1, 2017, to the extent such funds are not returned to the Nebraska Opportunity Grant Fund by the *for-profit postsecondary institution*.

005.02 Claims against the *fund* may be paid in whole or in part, based upon the extent to which the *class* objectives were met for each *claimant*, and taking into account considerations including but not limited to:

005.02(A) Amounts available and likely to become available to the *fund* for payment of claims;

005.02(B) Total amount and number of *claims* presented or reasonably likely to be presented in the future;

005.02(C) Total amount and number of *claims* caused by the termination of operation of an institution;

005.02(D) Amounts paid out from the *fund* on *claims* in the past;

005.02(E) Total amount of monies paid to the institution by identified or prospective claimants.

005.02(F) When the institution holds a surety bond, the *claimant* first ~~shall~~ **must** file a claim against the surety bond holder or against the holder of such other security agreement which the institution has filed with the *Commission*.

006. FUND BALANCE IN EXCESS OF MAXIMUM FUND LEVEL. When the *fund* exceeds the *maximum fund level*, funds in excess of the *maximum fund level* ~~shall~~ must be used as directed by the *Commission* to provide grants or scholarships for students attending *for-profit postsecondary institutions* in Nebraska.

007. PENALTY. The *authorization to operate* of any *for-profit postsecondary institution* which fails to comply with the provisions of this rule ~~shall~~ must be subject to revocation pursuant to Chapter 7 of Title 281 of the Nebraska Administrative Code.

008. ADVERTISING. A *for-profit postsecondary institution* may include references to the Guaranty Recovery Cash Fund in advertising or information provided to students or prospective students. Any such reference ~~shall~~ must clearly describe the protection and limitations prescribed in Neb. Rev. Stat. § 85-2426 and sections 004 and 005 of this chapter.