

**Council on Postsecondary Education
September 10, 2009**

**New Regulation for Definitions
for Independent College Licensing**

ACTION: The staff recommends that the Council approve the new administrative regulation 13 KAR 1:040 definitions for independent colleges in Kentucky.

The Council is amending one existing substantive administrative regulation and adopting one new substantive administrative regulation. 13 KAR 1:040 is a new administrative regulation that sets forth the definitions for those other two substantive regulations, 13 KAR 1:020 *Private college licensing* and 13 KAR 1:050 *Licensed out-of-state college's eligibility for Kentucky tuition grant*.

13 KAR 1:040 includes definitions that were originally located in 13 KAR 1:020 *Private college licensing*, such as "accredited," "accrediting agency," "agent," "in-state college," "out-of-state college," and "unearned tuition."

In addition, 13 KAR 1:040 references terms already defined in KRS 164.785, such as "college," "degree," and "diploma."

Importantly, 13 KAR 1:040 defines a new licensing phrase, "operating or soliciting," which is intended to help address the legal issue of interstate commerce by requiring a physical presence for licensure. The new definition is based upon South Carolina's definition.

Finally, 13 KAR 1:040 clarifies the term "president" to mean the president of the Council on Postsecondary Education.

1 COUNCIL ON POSTSECONDARY EDUCATION

2 New Administrative Regulation

3 13 KAR 1:040. Definitions for Independent Colleges.

4 RELATES TO: KRS 164.945, 164.946, 164.992, 165A.320, 13 KAR 1:020, 13 KAR
5 1:050.

6 STATUTORY AUTHORITY: KRS 164.947 and KRS 164.785

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.947 requires the Council
8 on Postsecondary Education by regulation to adopt standards and procedures for the licensing of
9 colleges as defined in KRS 164.945, and KRS 164.785 requires that out-of-state colleges
10 licensed by the Council for which accreditation by the Southern Association of Colleges and
11 Schools is not an option shall be reviewed and approved by the Council based on accreditation
12 criteria that mirrors Southern Association of Colleges and Schools accreditation criteria in order
13 to qualify as an eligible college in which a student may enroll and receive a Kentucky tuition
14 grant. This administrative regulation establishes definitions applicable to 13 KAR 1:020 and 13
15 KAR 1:050.

16 Section 1. (1) "Accredited" means the approval of an accrediting agency.

17 (2) "Accrediting agency" means a national or regional agency which evaluates colleges
18 and is recognized by the United States Department of Education, the Council on Higher Education
19 Accreditation, or the Council on Postsecondary Education.

20 (3) "Agent" means any person employed by a college to act as solicitor, broker, or
21 independent contractor to procure students for the college by solicitation in any form made at any

1 place other than the main campus of the college.

2 (4) "College" is defined by KRS 164.945.

3 (5) "Degree" is defined by KRS 164.945.

4 (6) "Diploma" is defined by KRS 164.945.

5 (7) "In-state college" means a college that is chartered by, organized within, and has its
6 principal location in Kentucky.

7 (8) "Operating or soliciting" means having actual presence within Kentucky and includes:

8 (a) an instructional or administrative site within Kentucky whether owned, leased, rented,
9 or provided without charge;

10 (b) instruction whether theory or clinical originating from or delivered within Kentucky
11 utilizing teachers, trainers, counselors, advisors, sponsors, or mentors;

12 (c) an agent, recruiter, in-state liaison personnel, institution, or business located in
13 Kentucky that advises, promotes, or solicits for enrollment or credits or for the award of an
14 educational or occupational credential,

15 (d) an articulation agreement with a Kentucky licensed college or state-supported
16 institution; or

17 (e) advertising, promotional material, or public solicitation in any form that targets
18 Kentucky residents through distribution or advertising in the state.

19 (9) "Out-of-state college" means a college that is chartered, organized, or has its principal
20 location outside Kentucky.

21 (10) "President" means the president of the Council on Postsecondary Education.

22 (11) "Unearned tuition" means the excess of cumulative collections of tuition and other
23 instructional charges over the cumulative amount of earned tuition and other instructional charges

- 1 prior to the first date of refund in accordance with the college's refund policy.

APPROVED

Paul Patton, Chair
Council on Postsecondary Education

Date

APPROVED

Dennis L. Taulbee, General Counsel
Council on Postsecondary Education

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 27, 2009 at 10:00 a.m. at the Council on Postsecondary Education, 1024 Capital Center Drive, Suite 320, Frankfort, Kentucky, 40601 in Conference Room A. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification to attend the hearing is received by that date, the hearing may be cancelled.

This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until October 31, 2009.

Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON:

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REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation *13 KAR 1:040. Definitions for Independent Colleges.*

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- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation sets forth the common definitions for 13 KAR 1:020 and 13 KAR 1:050.
 - (b) The necessity of this administrative regulation: KRS 164.945 through 164.947 requires the Council on Postsecondary Education to license these institutions as a protection for Kentucky citizens and to protect bona fide institutions from those who engage in fraudulent practices, unfair competition, or substandard educational programs; and KRS 164.785 requires that out-of-state colleges licensed by the Council for which accreditation by the Southern Association of Colleges and Schools (SACS) is not an option shall be reviewed and approved by the Council based on accreditation criteria that mirrors Southern Association of Colleges and Schools accreditation criteria in order to qualify as an eligible college in which a student may enroll and receive a Kentucky tuition grant.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 164. 947 requires that the Council on Postsecondary Education by regulation shall adopt standards and procedures for the licensing of colleges.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The administrative regulation sets forth the definitions for 13 KAR 1:020 and 13 KAR 1:050.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: N/A – not an amendment to an existing administrative regulation.

- (b) The necessity of the amendment to this administrative regulation: N/A – not an amendment to an existing administrative regulation.
 - (c) How the amendment conforms to the content of the authorizing statutes: N/A – not an amendment to an existing administrative regulation.
 - (d) How the amendment will assist in the effective administration of the statutes: N/A – not an amendment to an existing administrative regulation.
- (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are over 50 institutions licensed by the Council on Postsecondary Education. The primary impact is on institutions currently licensed by the Council, and on those new institutions who will seek licenses from the Council.
- (4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: This new regulation will provide definitions applicable to 13 KAR 1:020 and 13 KAR 1:050. By itself, this regulation will have minimal impact on the institutions—the impact is measured in the two substantive regulations that relate to this one, 13 KAR 1:020 and 13 KAR 1:050.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: No additional cost is contemplated as a result of the definitions.
 - (b) On a continuing basis: No additional cost is contemplated as a result of the definitions.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Not applicable for this definitions regulation.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Not applicable for this definitions regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Not applicable for this definitions regulation.
- (9) TIERING: Is tiering applied? Tiering is not appropriate under these circumstances.