**R152. Commerce, Consumer Protection.**

**R152-34. Utah Postsecondary School and State Authorization Act Rule.**

**R152-34-1. Purpose.**

The purpose of this rule is to:

(1) establish the form and content of the registration statement;

(2) specify information a postsecondary school must provide with a registration statement;

(3) establish how a postsecondary school may prove its financial viability in accordance with Subsections 13-34-202(1)(d) and R152-34-3(6);

(4) establish when a surety bond, certificate of deposit, or irrevocable letter of credit may be required;

(5) establish the form, content, and amount of a surety bond, certificate of deposit, or irrevocable letter of credit required in accordance with Section 13-34-202;

(6) provide for the execution and cancellation of a surety bond, certificate of deposit, or irrevocable letter of credit a postsecondary school obtains in accordance with Section 13-34-202;

(7) establish the amount of money a school may charge a student in a 12-month period to qualify for an exemption in accordance with Subsection 13-34-111(3);

(8) specify acts and practices that are prohibited in accordance with Section 13-34-108;

(9) specify the electronic format in which a postsecondary school is required to maintain an educational credential, enrollment agreement, and financing agreement in accordance with Section 13-34-203;

(10) specify the student outcomes a postsecondary school must disclose in accordance with Section 13-34-109;

(11) establish the type and number of credits required to obtain a degree or diploma from an unaccredited postsecondary school;

(12) establish:

(a) standards for granting to a postsecondary school a state authorization certificate in accordance with a reciprocity agreement;

(b) any filing or document required for a postsecondary school to obtain a state authorization certificate in accordance with a reciprocity agreement; and

(c) penalties for a postsecondary school that fails to comply with Section R152-34-11; and

(13) aid the division's administration and enforcement of Title 13, Chapter 34, Utah Postsecondary School and State Authorization Act.

**R152-34-2. Authority.**

This rule is promulgated in accordance with Subsection 13-2-5(1), Section 13-34-103, and Section 13-34-203.

**R152-34-3. Definitions.**

As used in this rule:

(1) "Change of ownership" means a change to any owner of a postsecondary school, including:

(a) sale or merger of a postsecondary school; or

(b) any other occurrence that changes whether a person is an owner in accordance with Subsection R152-34-3(7).

(2) "Composite score" means the score calculated by the United States Department of Education using a postsecondary school's financial information in accordance with 34 CFR 668.171 et seq.

(3) "Field trip" means a congregation in Utah of students and instructors from a postsecondary school that is not located in Utah:

(a) for instruction in the subject of enrollment;

(b) that lasts no more than ten calendar days; and

(c) occurs no more than three times per year in the same program.

(4) "Gross tuition revenue" means the total amount of tuition and fees collected, reduced by the amount of refunds paid, by a postsecondary school during the most recently completed 12-month fiscal year.

(5) "Material information" means information that could reasonably influence whether the division may deny, suspend, or revoke a registration statement, registration certificate, or state authorization certificate, including a change of ownership.

(6) "Other proof of financial viability" means financial information that demonstrates the postsecondary school:

(a) based on its audited financial statements, has a composite score of 1.5 or greater for the current year;

(b)(i) based on its audited financial statements, has a composite score of 1.0 through 1.4 for the current year;

(ii) in one of the immediately preceding two years, had a composite score of 1.5 or greater; and

(iii) provides information sufficient to allow the division, at its discretion, to determine the risk to student funds posed by a postsecondary school's financial condition, including:

(A) a detailed explanation of the events that caused the reduced composite score;

(B) the postsecondary school's plan to improve the composite score; and

(C) a teach out plan;

(c) based on its reviewed financial statements for the preceding two fiscal years:

(i) had two consecutive years of a current ratio at or above 1.0; and

(ii) had two consecutive years of a debt to equity ratio no greater than 3.0;

(d) based on its unaudited financial statements for the preceding two fiscal years:

(i) had two consecutive years of a current ratio at or above 1.0;

(ii) had two consecutive years of a debt to equity ratio no greater than 3.0; and

(iii) has an average credit score exceeding 580 for the postsecondary school's owners; or

(e) provides sufficient other information to the division such that the division director may, at the director's discretion, determine that the postsecondary school has demonstrated financial viability.

(7) "Owner" means a person who directly or indirectly:

(a) exercises substantial control over a postsecondary school; or

(b) owns or controls at least 20 % of the ownership interests in a postsecondary school.

(8) "Physical presence," as defined by Subsection 13-34-101(12), does not include a field trip or supervised field experience.

(9) "Supervised field experience" means a student learning experience that:

(a) occurs at a location in Utah that is not owned, operated, leased, maintained, or controlled by the postsecondary school in which the student is enrolled;

(b) primarily involves practical application of previous education;

(c) is supervised by a supervisor, mentor, faculty member, or other qualified professional who reports to the postsecondary school in which the student is enrolled; and

(d) is part of a program offered by a postsecondary school located outside of Utah in which the student is enrolled.

(10) "Unaccredited postsecondary school" means a postsecondary school that is not accredited by an accrediting agency.

**R152-34-4. Registration Statement -- Required Documents and Information.**

(1) A postsecondary school shall submit a complete registration statement on a form approved by the division, including all information required by the form and Subsection R152-34-4(2):

(a) each year, if the postsecondary school is an unaccredited postsecondary school;

(b) every two years, if the postsecondary school is an accredited postsecondary school; and

(c) within 30 days of any change to material information required by the registration statement.

(2) A postsecondary school shall include with its registration statement:

(a) if the postsecondary school is an accredited postsecondary school, a copy of its most recent and active accreditation statement;

(b) if the postsecondary school is a longstanding nonprofit accredited postsecondary school, a copy of its determination letter from the Internal Revenue Service demonstrating its nonprofit status, and documentation sufficient to demonstrate that it has continuously operated as a nonprofit for 20 years;

(c) financial documentation demonstrating it is fiscally responsible, including:

(i) for a postsecondary school that collected $500,000 or more in gross tuition revenue, the two most recent fiscal year end audited financial statements completed by a certified public accountant in accordance with GAAP;

(ii) for a postsecondary school that collected $250,000 - $499,999.99 in gross tuition revenue, the two most recent fiscal year end:

(A) audited financial statements completed by an external certified public accountant in accordance with GAAP; or

(B) reviewed financial statements completed by an external certified public accountant;

(iii) for a postsecondary school that collected $0 - $249,999 in gross tuition revenue:

(A)(I) the two most recent fiscal year end audited financial statements completed by an external certified public accountant in accordance with GAAP;

(II) the two most recent fiscal year end reviewed financial statements completed by an external certified public accountant; or

(III) unaudited financial statements for each of the two most recent fiscal years, a commercial credit report, and a personal credit report for each of the postsecondary school's owners;

(iv) for a postsecondary school that has not previously operated:

(A) pro forma financial projections, in a form satisfactory to the division, for the postsecondary school's first 12 months of operation; and

(B) a personal credit report for each of the postsecondary school's owners;

(d) a current certificate of existence or good standing;

(e) a disclosure indicating whether the postsecondary school, its owner, officer, director, or administrator:

(i) has violated, in the preceding 10 years, any state or federal law or rule, not including traffic violations, as determined in a criminal, civil, or administrative proceeding;

(ii) is presently being investigated for alleged violations of state or federal law or rule, not including traffic violations;

(iii) has been subject to a negative action by an accrediting agency in the preceding 24 months; or

(iv) is presently being investigated or is subject to any other proceeding by the postsecondary school's accrediting agency;

(f) a list of programs offered by the postsecondary school, including the total program cost for each program; and

(g) the number of students enrolled in the postsecondary school.

(3) A credit report provided to the division shall:

(a) be no more than 60 days old;

(b) include reports from Equifax, Experian, and Transunion, if available.

(4) Notwithstanding Subsection R152-34-4(1)(b), an accredited postsecondary school shall annually provide to the division financial documentation in accordance with Subsection R152-34-4(2)(c).

(5) A postsecondary school shall submit a renewal registration statement 30 days before its registration certificate or state authorization certificate expires.

(6)(a) A registration statement submitted to the division in accordance with Subsection R152-34-4(1)(c) shall, at the division's discretion, be submitted using:

(i) electronic mail; or

(ii) other electronic means approved by the division.

(b) If non-material information included in a registration statement becomes incorrect or incomplete, a postsecondary school shall correct the information within 30 days using electronic mail sent to the division.

**R152-34-5. Surety Bond, Certificate of Deposit, or Irrevocable Letter of Credit -- Form -- Amount -- Execution and Cancellation -- Other Proof of Financial Viability.**

(1) A postsecondary school that provides to the division other proof of financial viability in accordance with Subsection R152-34-3(6) is not required to maintain a surety bond, certificate of deposit, or irrevocable letter of credit.

(2)(a) A postsecondary school shall provide with its registration statement a surety bond, certificate of deposit, or irrevocable letter of credit in a form and amount approved by the division.

(b) A postsecondary school may provide a continuation certificate to demonstrate it maintains a surety bond in accordance with Section 13-34-202 and Section R152-34-5.

(c) A certificate of deposit or irrevocable letter of credit obtained in accordance with Section 13-34-202 and Section R152-34-5 shall be issued or held by a financial institution that has a location in Utah.

(3)(a) A postsecondary school's surety bond, certificate of deposit, or irrevocable letter of credit shall be for an amount based on the postsecondary school's gross tuition revenue, according to the following table:

|  |  |
| --- | --- |
| TABLE  Amount of Surety Bond, Certificate of Deposit, or Irrevocable Letter of Credit | |
| Gross Tuition Revenue | Maximum Amount |
| $0.00 - $50,000 | $12,500 |
| $50,000.01 - $100,000 | $25,000 |
| $100,000.01 - $200,000 | $50,000 |
| $200,000.01 - $300,000 | $75,000 |
| $300,000.01 - $400,000 | $100,000 |
| $400,000.01 - $500,000 | $125,000 |
| $500,000.01 - $1,000,000 | $250,000 |
| $1,000,000.01 - $2,000,000 | $500,000 |
| $2,000,000.01 - $5,000,000 | $1,250,000 |
| $5,000,000.01 - $10,000,000 or greater | $2,500,000 |

(b) A postsecondary school that operates in Utah, but does not maintain physical presence in Utah, shall obtain a surety bond, certificate of deposit, or irrevocable letter of credit in an amount based on its gross tuition revenue attributable to Utah residents enrolled in the postsecondary school.

(c) A postsecondary school may obtain more than one surety bond, certificate of deposit, or irrevocable letter of credit to reach the amount required by Subsection R152-34-5(3)(a).

(d) The division may, at its discretion, determine whether a surety bond, certificate of deposit, or irrevocable letter of credit maintained by the postsecondary school, but that is not payable to the division, satisfies, in whole or in part, the requirements of Sections 13-34-202 and R152-34-5.

(4) A postsecondary school that submits pro forma financial projections in accordance with Subsection R152-34-4(2)(c)(iv) shall provide a surety bond, certificate of deposit, or irrevocable letter of credit for an amount:

(a) based on the postsecondary school's projected gross tuition revenue for its first 12 months of operation; and

(b) consistent with Subsection R152-34-5(3)(a).

**R152-34-6. Cost Exemption.**

A postsecondary school that does not charge any student more than $3,000 in any 12-month period is exempt in accordance with Subsection 13-34-111(3)(d)(i)(C).

**R152-34-7. Prohibited Acts.**

Reserved.

**R152-34-8. Electronic Format of Educational Credential, Enrollment Agreement, and Financing Agreement.**

A postsecondary school shall:

(1) maintain a student's educational credential, enrollment agreement, and financing agreement in a text-searchable Portable Document Format (PDF) file;

(2) maintain a separate PDF file described in Subsection R152-34-8(1) for each student; and

(3) maintain a consistent file naming convention that allows a file described in Subsection R152-34-8(2) to be identified.

**R152-34-9. Required Outcome Disclosures.**

(1) A postsecondary school shall disclose in writing to its students, and prominently on its website, if one exists:

(a) the graduation or completion rate for its students;

(b) if the postsecondary school's program lasts more than one year, the percentage of students who return after the first year;

(c) if the postsecondary school provides education intended to prepare a student to take an exam required for professional licensure, the rate at which the postsecondary school's students pass the licensure exam; and

(d) the basis for any representation made by the postsecondary school regarding the impact of its program on a student's future earnings.

(2) An accredited postsecondary school may satisfy Subsection R152-34-9(1) by providing to a student:

(a) a document that contains the information present on the accredited postsecondary school's College Scorecard maintained by the United States Department of Education; or

(b) the web address that leads to the accredited postsecondary school's College Scorecard maintained by the United States Department of Education.

**R152-34-10. Type and Number of Credits Required for Degree or Diploma Offered by an Unaccredited Postsecondary School.**

To award a degree or diploma, a postsecondary school shall require a student to complete:

(1) 60 to 90 credit hours for an associate degree;

(2) 120 to 180 credit hours for a bachelor's degree;

(3) 150 to 225 credit hours for a master's degree; and

(4) 200 to 300 credit hours for a doctorate degree.

**R152-34-11. State Authorization Certificate -- Reciprocity Agreement.**

(1) An accredited postsecondary school may obtain a state authorization certificate by filing a registration statement in accordance with Section R152-34-4.

(2) A postsecondary school that is exempt from Sections 13-34-201 through 13-34-205 in accordance with Subsection 13-34-111(3) may obtain a state authorization certificate by filing a registration statement on a form approved by the division that includes:

(a) the postsecondary school's:

(i) name, including any alternate name it uses to do business;

(ii) mailing and physical address;

(b) the name, telephone number, and electronic mail address of a person the division can contact regarding the registration statement;

(c) if the postsecondary school is a longstanding nonprofit accredited postsecondary school, a copy of its determination letter from the Internal Revenue Service demonstrating its nonprofit status, and documentation sufficient to demonstrate that it has continuously operated as a nonprofit for 20 years;

(d) a copy of the postsecondary school's current accreditation statement; and

(e) a statement and relevant documents demonstrating which exemption described by Subsection 13-34-111(3) applies to the postsecondary school.

**KEY: postsecondary schools, state authorization, registration, consumer protection**

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