



Tab 12

Higher Education Student Funding Act Draft Regulation

Coordinating Board for Higher Education
December 12, 2018

BACKGROUND

During the 2007 legislative session, the General Assembly passed SB 389, which established the Higher Education Student Funding Act (HESFA) in §§ 173.1003-173.1006, RSMo. The act limited public institutions of higher education to raising tuition and required fees for Missouri resident undergraduate students to that of consumer price index. If public institutions of higher education exceeded their allowable increase, they incurred a penalty or could request a waiver of the penalty. The CBHE initially adopted a policy for implementation of HESFA on December 18, 2008. A revised policy was adopted on January 14, 2009 and has been followed ever since.

During the 2018 legislative session, the General Assembly passed SB 807 & 577, which modified the parameters set forth in HESFA. The new parameters allow public institutions of higher education to increase tuition and required fees for Missouri resident undergraduate students by consumer price index plus an amount (no greater than 5%) that would produce an increase in net tuition revenue no greater than the dollar amount by which state operating support was reduced in the prior fiscal year.

CURRENT STATUS

MDHE staff developed a draft internal model for how the new HESFA parameters will be calculated beginning with the 2019-2020 academic year. MDHE staff disseminated the proposed calculations and solicited feedback from various stakeholders of public institutions of higher education, including Presidents, Chancellors, Chief Financial Officers, Legal Counsel, Institutional Research Directors, the Council on Public Higher Education, and the Missouri Community College Association.

Furthermore, MDHE staff drafted a proposed rule based on the current CBHE HESFA policy. Of note, substantive changes from the current HESFA policy include the following:

- Definitions for the terms booked tuition, institutional aid, net tuition revenue, required fees, state appropriations, and state operating support;
- Revised limits on tuition increases consistent with the statutory language;
- Lengthened notification deadlines;
- Clarification on which fiscal year's state operating appropriation will be subject to the penalty;
- Allowance for submission of more than one amended notice of tuition change if requested by the Commissioner; and
- Addition of "magnitude of tuition increase and the likely impact on the students the institution serves" as an extraordinary circumstance the Commissioner may consider when evaluating a waiver request.

The attachment entitled "Proposed HESFA Rule" contains the proposed language. MDHE staff disseminated the proposed rule and solicited feedback from various stakeholders of public institutions of higher education, including Presidents, Chancellors, Chief Financial Officers, Legal Counsel, Institutional Research Directors, the Council on Public Higher Education, and the Missouri Community College Association.

NEXT STEPS

Upon CBHE approval, MDHE staff will file the proposed rule as required by statute and executive order, including with the Joint Commission on Administrative Rules and the Secretary of State. Until the rule is fully promulgated, MDHE staff will follow the proposed rule for all HESFA-related matters.

RECOMMENDATION

MDHE staff recommend the CBHE direct the Commissioner of Higher Education to take all actions necessary to ensure the attached proposed rulemaking becomes effective as an administrative rule as soon as possible. In the interim, MDHE staff recommend the CBHE adopt the proposed rule as its new policy for implementation of HESFA until the rule is fully promulgated.

ATTACHMENT

- Proposed HESFA Rule (6 CSR 10-14.010 Limit on Tuition Increases)

Tab 12 Attachment
Proposed HESFA Rule (6 CSR 10-14.010 Limit on Tuition Increases)

**Title 6—DEPARTMENT OF HIGHER EDUCATION Division 10—Commissioner of
Higher Education Chapter 14—Limit on Tuition Increases**

6 CSR 10-14.010 Limit on Tuition Increases

PURPOSE: This rule establishes the process by which public institutions of higher education in Missouri will demonstrate compliance, or seek a penalty waiver for noncompliance, with limits on annual tuition increases in accordance with the Higher Education Student Funding Act, sections 173.1000-1003, RSMo.

(1) Definitions.

(A) Academic year means the fall and spring semesters between August 1 and July 31 of one 365-day period.

(B) Average tuition means the sum of all included institutions' tuition for the current academic year divided by the number of included institutions. This figure will be determined by adding the tuition of each public four-year institution and State Technical College, then dividing by the number of included institutions. If any community college has tuition that is equal to or exceeds the aforementioned average tuition, the average tuition shall be recalculated to include that community college's tuition.

(C) Booked tuition means the amount of tuition and required fees an institution records with MDHE as permitted under this rule, but not actually charged during an academic year. Booked tuition is included in an institution's allowable annual increase and the average tuition, but is waived for students in the year that it is initially booked. Booked tuition may be charged in future years without counting further towards an institution's allowable increase when charged.

(D) CBHE means the Coordinating Board for Higher Education.

(E) Commissioner means the Commissioner of Higher Education.

(F) Consumer price index or CPI means the consumer price index for all urban consumers, 1982-1984=100, not seasonally adjusted, as defined and officially recorded by the United States Department of Labor or its successor agency, for December of the current year compared to December of the previous year.

(G) Fee established by the student body of the institution or student approved fee means any fee the amount of which has been approved by a majority of students who vote in a campus-wide election or by a majority of members of an officially recognized student government organization popularly elected by the students of an institution or a campus within a multi-campus system.

(H) FTE means full time equivalent.

(I) Included institution means all institutions that offer four-year degree programs, State Technical College, and any community college that charges out-of-district Missouri residents tuition that is equal to or exceeds the average tuition.

(J) Institution means an approved public institution of higher education, as defined in § 173.1102, RSMo. An institution that is comprised of more than one campus at which the same level of degree is offered shall constitute one institution for purposes of this rule.

(K) Institutional aid means the aid awarded to the student by the student's institution of higher education only from such institution's funds. It does not include the following: Pell Grants; state awards such as the Missouri higher education academic scholarship program, the A+ schools program, and the access Missouri financial aid program; foundation scholarships; third-party scholarships; employee and dependent fee waivers; and student loans.

(L) MDHE means the Missouri Department of Higher Education.

(M) Mid-year tuition increase means any ongoing increase in tuition that occurs after an institution has submitted its initial notice of tuition change to the MDHE, or any amended notices of tuition change related to the initial notice of tuition change, the duration of which extends beyond the end of the academic year in which it is initially imposed.

(N) Notice of tuition change means written documentation in a format prescribed by MDHE, the accuracy of which is attested by the institution's president or chancellor, indicating the tuition for the current academic year, the tuition for the upcoming academic year, and the percentage change between the two.

(O) Net tuition revenue means the net amount of tuition and required fees collected from resident degree-seeking undergraduates reduced by institutional aid only during the fiscal year in which the increase is charged.

(P) Required fees means those fees charged to all full-time undergraduate students and excludes course- and program-specific fees and any student approved fee established after August 27, 2007.

(Q) State appropriations means the state operating appropriation for the prior year per FTE student for the prior year compared to the state operating appropriation for the current year per FTE student for the prior year.

(R) State operating appropriation means the total dollar amount appropriated by the Missouri Legislature for an institution's core operating appropriation for the fiscal year, exclusive of capital appropriations and any amount withheld by the governor or legislature.

(S) State operating support means the funding actually disbursed from state operating appropriations to approved public institutions and does not include appropriations or disbursement for special initiatives or specific program additions or expansions. To qualify as special initiatives or specific program additions or expansions, it must be separated out in its own appropriation line item in the legislature's budget bill for public institutions of higher education.

(T) Temporary tuition surcharge means any temporary increase in tuition that is assessed in addition to the amount indicated by an institution in its initial notice of tuition change, or in any amended notices of tuition change related to the initial notice of tuition change. The time period during which a temporary tuition surcharge is assessed shall not extend beyond the end of the academic year in which the surcharge is initially imposed.

(U) Tuition means the dollar amount an institution charges each Missouri resident undergraduate student enrolled in 30 credit hours plus the required fees for the academic year. In

the community college context, “tuition” means out-of-taxing-district Missouri resident tuition plus the required fees for the academic year.

(2) Limits on Tuition Increases.

(A) Any institution with tuition that is greater than the average tuition shall not increase tuition for the next academic year at a percentage rate that exceeds the percentage increase in the CPI or zero, whichever is greater, plus a percentage of not more than five percent that would produce an increase in net tuition revenue no greater than the dollar amount by which the state operating support was reduced for the prior fiscal year, if applicable. Booked tuition will count toward an institution’s allowable increase and the average tuition in the year it is initially booked.

(B) Any institution with tuition that is less than the average tuition shall not increase tuition for the next academic year in a dollar amount that exceeds the product of either zero or the percentage change in the CPI, whichever is greater, times the average tuition, plus a percentage of not more than five percent that would produce an increase in net tuition revenue no greater than the dollar amount by which the state operating support was reduced for the prior fiscal year, if applicable. Booked tuition will count toward an institution’s allowable increase and the average tuition in the year it is initially booked.

(C) A community college shall be required to abide by the limitations and procedures set forth in this rule only if its tuition is greater than or equal to the average tuition.

(D) Any institution that exceeds the limits set forth in subsection (A) or (B) of this section shall remit 5% of its state operating appropriation during the fiscal year in which the tuition increase will take place to the state’s general revenue fund or request a waiver of the 5% penalty pursuant to section (4) of this rule.

(3) Notification Procedure.

(A) By December 1 of each year, MDHE will notify all institutions of the average tuition. This notice will also indicate which institutions have higher than average tuition, which institutions have lower than average tuition, and which institutions will be exempt from the requirements of this rule for the upcoming academic year.

(B) By January 31st of each year, MDHE will notify all institutions of the prior year’s CPI and their allowable increase.

(C) By July 1 of each year, each institution must submit its notice of tuition change to the CBHE, via MDHE. If the notice of tuition change is discovered to be inaccurate or becomes inaccurate due to changes in underlying data or assumptions, the institution shall notify MDHE immediately and submit a corrected notice of tuition change as soon as practicable.

(D) Any institution that imposes a mid-year tuition increase and/or temporary tuition surcharge must provide a notice of tuition change reflecting the increase as soon as it is practically possible to do so and will be submit to the following:

1. If the mid-year tuition increase and/or temporary tuition surcharge plus the tuition initially indicated in the institution's notice of tuition change exceed the increase permitted by this rule, the institution must abide by the terms of this rule.

2. Because any mid-year tuition increase and/or temporary tuition surcharge will likely be associated with exigent circumstances, the Commissioner and the CBHE recognize that the timeline this rule sets forth for the normal appeals process may be too lengthy for mid-year appeals. The Commissioner and the CBHE will address mid-year appeals in as expeditious a manner as possible, and any institution seeking a waiver under this rule is expected to provide all required information in a like manner. All parties will honor the intent of the timeline this rule sets forth for the normal appeals process, and adequate time for public comment, preparation of responses, consideration of arguments, and deliberation will be afforded.

3. If an institution imposes a mid-year tuition increase, the figure used to calculate the amount the institution may increase tuition the following year will be the amount indicated in the institution's initial notice of tuition change, or in any amended notices of tuition change related to the initial notice of tuition change, plus any mid-year tuition increase.

4. If an institution imposes a temporary tuition surcharge, the figure used to calculate the amount the institution may increase tuition the following year will be the amount indicated in the institution's initial notice of tuition change, or in any amended notices of tuition change related to the initial notice of tuition change, plus any mid-year tuition increase, but shall not include any amount attributable to a temporary tuition surcharge. (D) Within 15 calendar days of receiving the institution's notice of tuition change, MDHE will notify the institution that its notice of tuition change has been received and whether its tuition increase triggers the penalty described in subsection (2)(D) of this rule.

(4) Penalty Waiver Process

(A) No later than 30 calendar days after receiving MDHE's notification that the tuition increase triggers the penalty, an institution may submit a request for a waiver of the penalty. The waiver request must set forth each factor the institution contends supports its decision to increase tuition in excess of the limits set forth in this rule.

(B) No later than 45 calendar days after the institution submits its waiver request, the Commissioner will meet with the institution at a time and place agreeable to all parties.

(C) The Commissioner may ask an institution to submit additional or clarifying written material to supplement the institution's waiver request before or after the meeting. Such requests from the Commissioner may include, among others, information regarding the areas of inquiry listed in section (5) of this rule.

(D) An institution requesting a waiver must provide all information requested by the Commissioner in a timely manner.

(E) All written materials, including but not limited to notices of tuition change and waiver requests, submitted to the Commissioner in connection with this rule will be considered public information and will be posted on MDHE's website. The MDHE website will specifically advise members of the public that they may submit written comments about any of the posted material

to the Commissioner at any time before the meeting of the Commissioner and the institution requesting a waiver takes place. The Commissioner may determine the weight each comment should be afforded and may consider the comments in determining whether to grant a waiver. Copies of all comments must be provided to the institution requesting a waiver within three calendar days of the date the comment is received.

(F) Unless otherwise agreed, the meeting of the Commissioner and the institution requesting a waiver will be led by the Commissioner and may include other individuals as requested by the Commissioner. The institution will have an opportunity to present its rationale for seeking a waiver and to address any comments received from the public. The Commissioner and/or his/her staff will have an opportunity to ask questions of the institution.

(G) The Commissioner will notify the institution whether he/she has determined that its tuition increase is sufficiently warranted within 20 calendar days of the meeting or within 20 calendar days after the institution has provided all information requested by the Commissioner, whichever is later. If the Commissioner finds that the tuition increase is not sufficiently warranted, such notice shall be in writing and shall state the reasons that such increase was deemed not sufficiently warranted. The notice will also inform the institution what percentage, if any, of its state operating appropriation the Commissioner recommends the institution be required to remit to the state's general revenue fund.

(H) If the Commissioner determines that the tuition increase is not sufficiently warranted, the institution shall have 10 calendar days to submit an amended notice of tuition change and the rationale for the tuition rate set forth in the amended notice of tuition change, to agree to increase tuition only at the level permitted by section (2) of this rule, or to maintain its original position. In any case, the institution shall notify the Commissioner of its decision in writing within 10 calendar days after the Commissioner notifies the institution that the initial tuition increase is not sufficiently warranted.

(I) If the institution submits an amended notice of tuition change:

1. The Commissioner shall consider the amended notice of tuition change and the rationale for the tuition rate set forth in the amended notice of tuition change and shall meet with the institution if deemed necessary by the Commissioner.

2. The Commissioner will notify the institution whether he/she has determined that the tuition increase set forth in the amended notice of tuition change is sufficiently warranted within 20 calendar days of the meeting or within 20 calendar days after the institution has provided all information requested by the Commissioner, whichever is later.

3. If the Commissioner finds that the tuition increase is not sufficiently warranted, such notice shall be in writing and shall state the reasons that such increase was deemed not sufficiently warranted. The notice will also inform the institution what percentage, if any, of its state operating appropriation the Commissioner recommends the institution be required to remit to the state's general revenue fund.

4. If the Commissioner determines that the tuition increase set forth in the institution's amended notice of tuition change is not sufficiently warranted, the institution shall have 10 calendar days within which to either agree to increase tuition only at the level permitted by

section (2) of this rule or to maintain the position indicated in its amended notice of tuition change. In either case, the institution shall notify the Commissioner of its decision in writing within 10 calendar days after the Commissioner notifies the institution that the amended tuition increase is not sufficiently warranted.

5. An institution may not submit more than one amended notice of tuition change per academic year unless requested by the Commissioner.

(J) If the Commissioner determines that the tuition increase is not sufficiently warranted and the institution decides to maintain its original and/or amended position rather than to increase tuition only at the level permitted by section (2) of this rule, the Commissioner must notify the CBHE of his/her determination and recommendation as to what percentage of the institution's state operating appropriation the Commissioner recommends the institution be required to remit to the state's general revenue fund.

(K) If the Commissioner determines that the tuition increase is not sufficiently warranted, the CBHE will determine what, if any, percentage of the institution's state operating appropriation must be remitted to the state's general revenue fund at its next regularly scheduled meeting or at a specially called meeting, by means of a majority vote of all CBHE members present at the meeting, whether present in person or by electronic means; provided, however, that no vote will be made on the matter unless a quorum is established. The institution will have an opportunity to present each factor it believes supports its decision to increase tuition to the CBHE. The CBHE's decision will be binding and final.

(L) If the CBHE votes to impose a penalty, the penalty shall be up to 5% of the institution's state operating appropriation during the fiscal year in which the tuition increase will take place. The penalty shall be a one-time penalty only. The institution shall remit the penalty to the state's general revenue fund no more than 30 calendar days after the date the CBHE votes to impose the penalty.

(M) All written material submitted by an institution in connection with this rule shall be submitted in electronic form.

(N) The Commissioner, at his/her discretion, may agree to extend any deadline described in this rule.

(O) Throughout his/her tenure, the Commissioner will be committed to addressing waiver requests in a timely manner. Failure by the Commissioner to meet any deadline described in this rule shall not, however, invalidate the process.

(P) This rule is not intended to inhibit institutions' ability to engage in conversations with the Commissioner, MDHE staff, or the CBHE about issues of interest to members of the higher education community, including tuition.

(5) Penalty Waiver Decision Criteria.

(A) The Commissioner shall consider all written and verbal information provided by an institution and through public comments in the waiver request process when determining whether the tuition increase is sufficiently warranted. The Commissioner may request the institutions to provide information about the number of students enrolled at satellite or branch

campuses, in online classes, or in distance education programs at each institution, and the tuition charged for each such type of education. The Commissioner may evaluate information outside the institution-provided material to the extent necessary to ensure a fair and complete decision, though any attempt to do so will not relieve the institution of its burden to produce a complete and accurate decision-making record.

(B) The determination of whether an institution's tuition increase is sufficiently warranted will be based on the relationship between state appropriations and the consumer price index. The Commissioner may also consider extraordinary circumstances, including but not limited to:

1. Mandatory costs that have increased at a rate that exceeds the CPI, including but not limited to increased costs incurred in connection with the implementation of state or federal mandates or legal requirements.
2. Historical trends in state operating appropriations, tuition policy, and other financial issues and relationships.
3. Costs related to the institution's mission that justify growth in revenues in excess of the CPI.
4. Costs related to initiatives designed to meet specific needs or strategic goals of the state of Missouri that justify growth in revenues in excess of the CPI.
5. The current and/or historical structure of the institution's total budget, including the institution's allocations for faculty and non-faculty salaries, institutional financial aid, student support, research, physical plant maintenance, and other operational activities.
6. Damage, destruction, or deterioration of facilities, infrastructure, property, or other physical assets of an institution for which there are insufficient funds from state appropriations or insurance proceeds to repair or replace.
7. Public comments about the material posted on MDHE's website pertaining to the institution's waiver request.
8. Magnitude of tuition increase and the likely impact on the students the institution serves.