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# TENNESSEE

## FINAL GRADING ANALYSIS

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OVERALL SCORE: **446/700 POINTS (64%)**  
LETTER GRADE: **D**

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### I. OVERSIGHT BODY: **50/100 POINTS**

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A. IS THERE A STATUTORILY CREATED OVERSIGHT BODY  
THAT IS PUBLICLY ACCOUNTABLE?  
**45/60 POINTS**

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Element	Points Available	Points Awarded
1. Oversight body is a multi-member board, commission, or panel created by statute	10	10
2. Oversight body was statutorily created specifically to oversee private postsecondary institutions	10	0
3. Multi-member board, commission, or panel is the ultimate decision maker (as opposed to a single person, like the head of a department or director)	10	10
4. Oversight body can engage in rulemaking	10	10
5. Oversight body's meetings must be open to the public	5	5
6. Oversight body's meetings must allow public comment	5	0
7. Oversight body can initiate investigations	5	5
8. Oversight body can impose penalties for violations	5	5
<b>Total Points</b>	60	45

**Explanation:**

The Tennessee Higher Education Commission, a multi-member body created by statute, is tasked with duties related to a broad array of schools in the state of Tennessee; thus, it was not created solely for the oversight of private postsecondary educational institutions. (Tenn. Code Ann. § 49-7-202; Tenn. Code Ann. § 49-7-2005.)

The Commission can engage in rulemaking, initiate investigations, and exercise other powers and duties implied but not enumerated that, in the judgment of the Commission, are determined necessary in order to carry out the laws and regulations in place to govern the postsecondary institutions that fall within the jurisdiction of the commission. (Tenn. Code Ann. § 49-7-202; Tenn. Comp. R. & Regs. R. 1540-01-02-.02.)

The Commission is subject to Tennessee’s Open Meetings Law and meetings must be open to the public. (Tenn. Code Ann. § 8-44-102.) However, there is no specifically enumerated requirement that the public be allowed to comment during the meeting.

**B. STATUTE-SPECIFIED MEMBERSHIP:**

**1. TO WHAT EXTENT ARE LIMITATIONS PLACED ON FOR-PROFIT MEMBERSHIP ON THE OVERSIGHT BODY?**

**0/25 POINTS**

Explicit prohibition on for-profit majority, plus no possibility of a majority of the quorum	Explicit prohibition on for-profit majority	Discouraged	No prohibition specified, but not discouraged	For-profit majority mandated
25 Points	20 Points	10 Points	0 Points	-5 points

**Explanation:**

While Tennessee law does place limitations on appointing employees or trustees of a public institution of higher learning to the Commission, it does not place limitations on for-profit membership on the Commission. (Tenn. Code Ann. § 49-7-204.)

**2. IS THE OVERSIGHT BODY MANDATED TO INCLUDE AT LEAST ONE CONSUMER ADVOCATE?**

**0/10 POINTS**

Yes	No
10 Points	0 Points

**Explanation:**

Although the Commission does include two students (one voting and one nonvoting), Tennessee law does not mandate that its membership include an individual with expertise and experience in the area of consumer advocacy. (Tenn. Code Ann. § 49-7-204.)

**3. ARE THE MEMBERS APPOINTED BY A PUBLICLY ACCOUNTABLE OFFICIAL OR ELECTED IN A GENERAL ELECTION?**

**5/5 POINTS**

All	Majority	Half	Minority	None
5 Points	3 Points	2.5 Points	1 Point	0 Points

**Explanation:**

The governor appoints 6 voting members, the speaker of the senate appoints 1 voting member, the speaker of the house of representatives appoints 1 voting member, and the speakers jointly appoint 1 voting member. (Tenn. Code Ann. § 49-7-204.)

## II. STATE OVERSIGHT—EFFICACY: **58/100 POINTS**

### A. DOES THE STATE REQUIRE ONSITE REVIEW OF PRIVATE POSTSECONDARY INSTITUTIONS?

**3/10 POINTS**

Mandatory onsite reviews			Discretionary	None
Every 2 years or less	Every 3-5 years	Over 5 years	Discretion to conduct onsite reviews	No review specified
10 Points	8 Points	5 Points	<b>3 Points</b>	0 Points

**Explanation:**

Beginning on January 1, 2018, Tennessee requires institutions with regular, temporary, or conditional authorization to file for reauthorization annually. (Tenn. Comp. R. & Regs. R. 1540-01-02-.07 (3).)

### B. DOES THE STATE REQUIRE UNANNOUNCED INSPECTIONS FOR ONSITE REVIEWS?

**3/5 POINTS**

Required unannounced visits	Discretion to do unannounced visits	No indication
5 Points	<b>3 Points</b>	0 Points

**Explanation:**

Commission staff has discretion to conduct unannounced site visits. (Tenn. Comp. R. & Regs. R. 1540-01-02-.10(2).) However, the Commission may conduct these unannounced inspections only in very specific circumstances.

### C. DOES THE STATE REQUIRE REGULAR REVIEWS OF PRIVATE POSTSECONDARY APPROVAL TO OPERATE?

**20/20 POINTS**

Mandatory			Discretionary	None
Every 2 years or less	Every 3-5 years	Over 5 years	Discretion to conduct reviews	No review specified
<b>20 Points</b>	15 Points	10 Points	5 Points	0 Points

**Explanation:**

Beginning on January 1, 2018, Tennessee requires institutions to file for reauthorization annually. (Tenn. Comp. R. & Regs. R. 1540-01-02-.07 (3).)

**D. DO THE CRITERIA FOR RENEWAL OF AUTHORIZATION MANDATE A REVIEW OF FACTORS ESSENTIAL TO ACADEMIC AND ETHICAL INTEGRITY?**

**17/20 POINTS**

All 8 Required	7 of 8	6 of 8	5 of 8	4 of 8	3 of 8	2 of 8	1 of 8	0 of 8
20 Points	17.5 Points	<del>15</del> <b>17</b> Points	12.5 Points	10 Points	7.5 Points	5 Points	2.5 Points	0 Points

Element	
Admission requirements	<b>M</b>
Graduation requirements	<b>M</b>
Placement rate	<b>M</b>
Completion rate (or graduation rate)	<b>M</b>
Advertising practices	<b>M</b>
Cohort default rate	<b>D</b>
Accreditation status	<b>M</b>
Financial aid policies	<b>D</b>

*M= Mandatory; D=Discretionary*

**Explanation:**

Tennessee law requires the Commission to act upon a renewal application for authorization under the same procedures used in initial applications. (Tenn. Code Ann. § 49-7-2008(f)(2).) The minimum standards are reviewed. Institutions must demonstrate that they are continuing to meet minimum standards. The minimum standards for postsecondary institutions seeking authorization include review of placement rates and graduation rates (Tenn. Comp. R. & Regs. R. 1540-01-02-.07; Tenn. Comp. R. & Regs. R. 1540-01-02-.18), advertising practices (Tenn. Code Ann. § 49-7-2006(a)(1)(I)), accreditation status (Tenn. Code Ann. § 49-7-2006(b)), and graduation requirements (Tenn. Code Ann. § 49-7-2006(a)(1)(A)). Tennessee regulations lay out minimum standards for admissions (Tenn. Comp. R. & Regs. R. 1540-01-02-.12). Financial Aid data is reviewed and the Commission may request any additional documentation it deems necessary for clarification – this may include a review of financial aid policies, the state receives partial credit(Tenn. Comp. R. & Regs. R. 1540-01-02-.07(b).). Cohort default rates are reviewed only for institutions participating in Federal IV-E financial aid programs (Tenn. Comp. R. & Regs. R. 1540-01-02-.07(2)(16)).

**E. DOES THE STATE’S OVERSIGHT DISTINGUISH BETWEEN FOR-PROFIT AND NONPROFIT POSTSECONDARY INSTITUTIONS?**

**5/15 POINTS**

Yes, strongly distinguished	Yes, moderately distinguished	Yes, slightly distinguished	Not distinguished
15 Points	10 Points	<b>5 Points</b>	0 Points

**Explanation:**

Tennessee law has a narrowly tailored exemption which applies to specified private nonprofit postsecondary institutions. (Tenn. Code Ann. § 49-7-2004.)

F. DOES THE STATE REQUIRE INCREASED OVERSIGHT/SCRUTINY OF PRIVATE POSTSECONDARY INSTITUTIONS BASED ON POOR PERFORMANCE?

**10/10 POINTS**

Yes, mandatory	Yes, mandatory but limited	Yes, discretionary	Yes, discretionary but limited	No
10 Points	7.5 Points	5 Points	2.5 Points	0 Points

**Explanation:**

In Tennessee, institutions must annually report specified statistical data. If annual average institutional or individual program withdrawal rates exceed twenty-five percent (25%) or if annual average institutional or individual program in-field placement rates are less than seventy percent (70%), institutions shall explain the circumstances contributing to these rates, demonstrate how these rates are not an indicator of poor educational quality, and describe what actions the institution will take to lower the withdrawal rates and/or increase the in-field placement rates. Additionally, Commission staff may compare an institution's rates to the state average for that type of institution and/or program. When an institution-level or program level rate fails to meet the state average for two consecutive years Commission staff may recommend to the Commission that adverse action be taken against the institution.. (Tenn. Comp. R. & Regs. R. 1540-01-02-.18(6).)

G. DOES STATE LAW INCLUDE ANY SPECIAL PROTECTIONS FOR VETERANS WHO ATTEND PRIVATE POSTSECONDARY INSTITUTIONS?

**0/20 POINTS**

Yes	No
20 Points	0 Points

**Explanation:**

Tennessee law does not have any special protections in place specifically for veterans who attend private postsecondary educational institutions.

**III. STATE OVERSIGHT—SCOPE AND INCLUSION:**

**75/100 POINTS**

A. ARE EXEMPTIONS TO STATE OVERSIGHT COVERAGE LIMITED?

**75/100 POINTS**

No exemptions	Few exemptions	Moderate exemptions	Broad exemptions
100 Points	75 Points	50 Points	0 Points

**Explanation:**

Exempted institutions include those that offer instruction that is avocational/recreational; K-12 programs; eleemosynary institutions that do not promote their programs as leading toward educational credentials, narrowly tailored exemptions for some religious schools; narrowly tailored exemptions for some accredited institutions that have been in operation for at least 20 years; institutions that operate for the

study of law and are subject to the approval of the board of law examiners for this state; educational programs conducted by state-licensed health care institutions; narrowly tailored exemptions for specified nonprofits. As of October 2016, degree-granting institutions can apply for expedited authorization if they meet specified criteria. (Tennessee Code Annotated, Title 49, Chapter 7, Part 20.)

#### **IV. DISCLOSURE REQUIREMENTS: 60/100 POINTS**

##### A. ARE INSTITUTIONS REQUIRED TO DISCLOSE INSTITUTIONAL PERFORMANCE MEASURES TO POTENTIAL STUDENTS?

**20/20 POINTS**

Yes, mandatory	Yes, discretionary	None
Fact sheet or equivalent required to be given to students	Fact sheet or equivalent given to students upon request	No fact sheet required
<b>20 Points</b>	10 Points	0 Points

**Explanation:**

Tennessee mandates that private postsecondary institutions require prospective students to sign and date a form to be placed in the student file, which is either part of the enrollment contract or a pre-enrollment check list verifying that the student has received various disclosures. Institutions must also include documentation that students received graduation placement data exactly as presented to the Commission during the last reauthorization cycle in a specified format. (Tenn. Comp. R. & Regs. R. 1540-01-02-.13.)

##### B. WHICH INSTITUTIONAL PERFORMANCE DISCLOSURES ARE REQUIRED TO BE GIVEN TO STUDENTS PRIOR TO ENROLLMENT?

**20/60 POINTS**

Disclosures	Mandatory	Discretionary	Not specified
Cohort default rate (CDR)	10 Points	5 Points	0 Points
Graduation / completion rates	<b>10 Points</b>	5 Points	0 Points
Placement rates	<b>10 Points</b>	5 Points	0 Points
Wage information	10 Points	5 Points	0 Points
License exam passage rates	10 Points	5 Points	0 Points
Methods & sources used to calculate	10 Points	5 Points	0 Points

**Explanation:**

Tennessee law mandates that private postsecondary institutions require prospective students to sign and date a form to be placed in the student file, which is either part of the enrollment contract or a pre-enrollment check list verifying that the student has received various disclosures. Institutions must also include documentation that students received graduation placement data exactly as presented to the Commission during the last reauthorization cycle in a specified format. (Tenn. Comp. R. & Regs. R. 1540-01-02-.13.)

**C. DOES THE STATE REQUIRE SCHOOLS TO DISCLOSE ELEMENTS ESSENTIAL TO STUDENT PROTECTION PRIOR TO ENROLLMENT OR IN THE ENROLLMENT CONTRACT?**

**20/20 POINTS**

Element description	Mandatory	Discretionary	Not specified
Total cost of program	5 Points	2.5 Points	0 Points
Refund information	5 Points	2.5 Points	0 Points
Transferability of credits	5 Points	2.5 Points	0 Points
Length of program	5 Points	2.5 Points	0 Points

**Explanation:**

Tennessee law requires institutions to include several disclosures in the enrollment contract. These disclosures include information about the cost of the program, refund information, information related to the transferability of credit and the length of programs in both academic and calendar terms. (Tenn. Comp. R. & Regs. R. 1540-01-02-.13.)

**V. REGULATION OF RECRUITING PRACTICES:**

**100/100 POINTS**

**A. HAS THE STATE PUT INTO LAW A LIST OF PROHIBITED ACTS REGARDING ADVERTISING AND RECRUITING?**

**100/100 POINTS**

Yes, strong regulation	Yes, moderate regulation	Yes, weak regulation	No list of prohibited acts
100 Points	75 Points	50 Points	0 Points

PROHIBITED ACTS

Included in list of prohibited acts	
Misleading representations using the word “college” or “university”	<b>X</b>
Misleading institution affiliations (e.g. military, public institutions, businesses)	<b>X</b>
Promise of employment	<b>X</b>
Compensation for enrollment	<b>X</b>
Compensation or “bounty” to recruiters	
Deception (broad prohibition)	<b>X</b>
Misrepresentation (broad prohibition)	<b>X</b>
Misleading representations re: accreditation	<b>X</b>

*1-3=Weak; 3.5-6=Moderate; 7+ =Strong*

**Explanation:**

Tennessee law prohibits use of the term “university” or other terminology that could mislead the general public without authorization to do so, further, Tennessee has very specific requirements in place that an institution must meet before it can use the term “college” in its name. (Tenn. Code Ann. § 49-7-2021;

Tenn. Code Ann. § 49-7-2007; Tenn. Comp. R. & Regs. R. 1540-01-02-.20.) The state also prohibits misleading representations related to accreditation. There are several relevant laws and regulations in place to prohibit misleading representations related to institutional affiliations. (Tenn. Comp. R. & Regs. R. 1540-01-02-.20.) Finally, there are several regulations in place that have to effect of prohibiting representations relating to “free tuition” and prohibiting promotions related to financial aid incentives as opposed to education programs, these prohibitions are strong and broad in scope, and they have an effect similar to prohibiting compensation for enrollment, therefore, the state receives credit for prohibiting “compensation for enrollment.”

## VI. COMPLAINT PROCESS & RELIEF FOR STUDENTS:

**78/100 POINTS**

### A. DOES THE STATE REQUIRE A BOND OR FUND AS A CONDITION OF AUTHORIZATION?

**20/20 POINTS**

<b>Yes</b>	<b>No</b>
<b>20 Points</b>	0 Points

**Explanation:**

Tennessee law provides that at the time application is made for authorization to operate, or for renewal of the authorization, the Commission may require the postsecondary educational institution making the application to file with the Commission a good and sufficient surety bond. (Tenn. Code Ann. § 49-7-2013; Tenn. Comp. R. & Regs. R. 1540-01-02-.09.)



**Notable Provision:**

In addition to the required surety bond, Tennessee has created a tuition guaranty fund funded by fees assessed on authorized postsecondary institutions. The fee is based on tuition collected from students. While requiring a institutions to post a bond is the very least states should be doing to protect their students, it is important for states to have funds like tuition guaranty funds to ensure that students and tax payers are protected. (Tenn. Code Ann. § 49-7-2018.)

### B. DOES THE STATE REQUIRE A REFUND OF TUITION IF A STUDENT ENROLLS AS THE RESULT OF MISREPRESENTATION?

**10/20 POINTS**

<b>Yes, full refund</b>	<b>Yes, partial refund</b>	<b>No refund required</b>
20 Points	<b>10 Points</b>	0 Points

**Explanation:**

Tennessee law requires a bond to be conditioned to provide indemnification to any student or enrollee or the student’s or enrollee’s parents or guardian, determined to have suffered loss or damage as a result of any act or practice that is a violation of the governing statutes by the postsecondary educational institution. (Tenn. Code Ann. § 49-7-2013(a)(3)) Therefore, while there is no explicit requirement that the institution provide a full refund of tuition if a student enrolls as the result of misrepresentation, the law



very clearly prohibits misrepresentation, thus, under this provision, the student would likely receive at least a partial refund.

Additionally, the board of directors of the tuition guaranty fund (the board) may reimburse valid claims of students for tuition paid to that an institution that is participating in the tuition guaranty fund and goes bankrupt or ceases operations without completing its educational obligations or reimbursing its students. The refund may be provided in accordance with guidelines and regulations established by the board. (Tenn. Code Ann. § 49-7-2018(f).) There is no requirement that the student’s tuition is refunded in full.

**C. DOES THE STATE REQUIRE INSTITUTIONS TO REFUND TUITION IN THE EVENT OF CLOSURE?**

**15/20 POINTS**

Yes, full refund	Yes, partial refund	Yes, refund in limited circumstances	No refund required
20 Points	<b>15 Points</b>	10 Points	0 Points

**Explanation:**

Tennessee law has established a tuition guaranty fund from which reimbursement can be made to students, or an entity making loans to students, at private postsecondary education institutions that close without earning tuition collected from enrollees. (Tenn. Code Ann. § 49-7-2018.) There is no requirement that the student receive a full refund.

**D. DOES THE STATE ALLOW STUDENTS AMPLE TIME TO MAKE A COMPLAINT?**

**10/10 POINTS**

2 years or more (or no deadline)	1-2 years	Under 1 year	Not applicable
<b>10 Points</b>	5 Points	1 Point	0 Points

**Explanation:**

Tennessee law does not set a deadline by which students must submit a complaint to the commission.

Note: Tennessee’s rule states “Complaints shall be signed and submitted through hand delivery, mail, or electronic mail as provided for in Rule .27 of these rules.” There is not a Rule .27 at this writing in December of 2017. (Tenn. Comp. R. & Regs. R. 1540-01-02-.19(9)(a).)

**E. DOES THE STATE REQUIRE INSTITUTIONS TO DISCLOSE INFORMATION ABOUT FILING A COMPLAINT WITH THE STATE OVERSIGHT BODY?**

**17.5/20 POINTS**

Medium	Mandatory	Discretionary	Not specified
Catalog	<b>10 Points</b>	5 Points	0 Points
Website	5 Points	<b>2.5 Points</b>	0 Points
Enrollment contract	<b>5 Points</b>	2.5 Points	0 Points

**Explanation:**

Tennessee law requires schools to include information about filing a complaint including the address and telephone number of the licensure staff of the Commission for grievances not settled at the institutional level. (Tenn. Comp. R. & Regs. R. 1540-01-02-.11(p).) Prior to enrolling institutions must require students to sign and date a form which includes, among other disclosures, information on filing grievances, including contact information for the commission. (Tenn. Comp. R. & Regs. R. 1540-01-02-.13.) Though institutions are not explicitly required to include information on the institutional website, it is common for institutions to include the institutional catalog or information similar to that contained in the catalog on their website. Therefore, the state receives partial credit for providing discretion for institutions to post this information on the institutional website.

F. IS THE COMPLAINT PROCESS READILY ACCESSIBLE AND AVAILABLE ON THE STATE OVERSIGHT BODY WEBSITE?

**5.5/10 POINTS**

Yes, with address	Yes, with phone #	Yes, with email address	Yes, with electronic form	No
2 Points	2 Points	3 Points	<b>3 1.5 Points</b>	0 Points

**Explanation:**

The Commission makes a form available online that students must complete and mail or fax to it. The form contains instructions, a mailing address, and a fax number. Because the form cannot be submitted online from the website, only partial credit is given for the electronic form.

**VII. ENFORCEMENT: 25/100 POINTS**

A. IS THERE LOSS OF STATE AID FOR SCHOOLS THAT REPEATEDLY PRODUCE SUBSTANDARD GRADUATION RATES, JOB PLACEMENT RATES, AND/OR COHORT DEFAULT RATES?

**5/30 POINTS**

Yes, required	Yes, required but limited	Yes, discretionary	Yes, discretionary but limited	No
30 Points	20 Points	15 Points	<b>5 Points</b>	0 Points

**Explanation:**

Tennessee law does not mandate loss of aid for schools that repeatedly produce substandard graduation rates, job placement rates, and /or cohort default rates. However, in Tennessee, institutions must annually report specified statistical data. If annual average institutional or individual program withdrawal rates exceed twenty-five percent (25%) or if annual average institutional or individual program in-field placement rates are less than seventy percent (70%), institutions shall explain the circumstances contributing to these rates, demonstrate how these rates are not an indicator of poor educational quality, and describe what actions the institution will take to lower the withdrawal rates and/or increase the in-field placement rates. Additionally, Commission staff may compare an institution's rates to the state average for that type of institution and/or program. When an institution-level or program level rate fails to meet the state average for two consecutive years Commission staff may recommend to the Commission that adverse action be taken against the institution.. (Tenn. Comp. R. & Regs. R. 1540-01-02-.18(6).)

Given this monitoring, it is possible that there may be some loss of state aid, at the discretion of the Commission.

**B. DOES STATE LAW EXPLICITLY AUTHORIZE A PRIVATE RIGHT OF ACTION FOR STUDENTS AGAINST INSTITUTIONS THAT HAVE VIOLATED THE LAWS AND REGULATIONS IN PLACE TO GOVERN THEM?**

**0/30 POINTS**

Yes	Limited circumstances	No
30 Points	15 Points	<b>0 Points</b>

**Explanation:**

Tennessee law has not created a private right of action for students to use against institutions that have violated the laws and regulations in place to govern them. Tennessee law allows for mediation; “[n]othing in this section shall be construed to prohibit the use of nonbinding mediation to settle disputes arising between a postsecondary institution and its enrollees, nor the inclusion of a mediation clause in enrollment contracts.” (Tenn. Code Ann. § 49-7-2011(d).)



**Notable Provision:**

Tennessee prohibits authorized postsecondary institutions from utilizing mandatory arbitration provisions. This is an important protection for students and other states should follow Tennessee’s lead here. (Tenn. Comp. R. & Regs. R. 1540-01-02-.19(4).)

**C. DOES STATE LAW EXPLICITLY ALLOW ATTORNEY FEE AWARDS FOR STUDENTS WHO PREVAIL IN LITIGATION AGAINST PRIVATE FOR-PROFIT POSTSECONDARY INSTITUTIONS?**

**0/20 POINTS**

Yes	Limited	No
20 Points	15 Points	<b>0 Points</b>

**Explanation:**

The state does not explicitly allow attorney fee awards for students who prevail in litigation against institutions that have violated the laws and regulations in place to govern them.

**D. DOES STATE LAW EXPLICITLY AUTHORIZE ATTORNEY GENERAL INVOLVEMENT?**

**20/20 POINTS**

Yes	Limited circumstances	No
<b>20 Points</b>	10 Points	0 Points

**Explanation:**

Tennessee law explicitly authorizes Attorney General involvement in enforcing laws and regulations in place to govern private postsecondary educational institutions. (Tenn. Code Ann. § 49-7-2017.)

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## BONUS POINTS:

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Tennessee does not receive any bonus points.



## ILLUMINATING INFORMATION

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### RECIPROCITY AGREEMENTS

Tennessee is a member of the State Authorization Reciprocity Agreements (SARA).

### LITIGATION, INVESTIGATIONS, AND ACTIONS INVOLVING PRIVATE PRIVATE FOR-PROFIT EDUCATIONAL INSTITUTIONS IN TENNESSEE

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For information about pending and recent federal and state government investigations and actions regarding for-profit colleges see David Halperin's compilation at <http://www.republicreport.org/2014/law-enforcement-for-profit-colleges/#sthash.1vc4HmPw.dpuf>.