§ 5007. Tuition reimbursement account. 1. Except as otherwise provided in subdivision six of this section, the portion of the annual assessment of schools licensed pursuant to section five thousand one of this article as prescribed in subdivision nine of such section and all fines, penalties and settlements received pursuant to this article shall be transferred upon receipt into the tuition reimbursement account.

3. a. The commissioner shall develop a complaint form and provide such form to students. In order to claim a refund, a student shall apply to the fund with a complaint form pursuant to the requirements of section five thousand three of this article. Except as otherwise provided in this article, the commissioner shall compute the refund, if any, using the refund formula established by subdivision three of section five thousand two of this article.

b. Claimants who had been enrolled in schools which have not closed or ceased operation shall be required to show in a manner determined by the commissioner that:

(1) the student is eligible for a refund;

(2) the student has made a request to the school for a refund; and

(3) the school has failed to make the refund within the time period required by this article.

c. The commissioner shall act on each refund request within thirty business days of such request.

4. Students may be eligible for refunds under this section as follows:

a. A student who is offered a teachout plan for the curriculum in which the student was enrolled at the time the school closed or ceased operation, which has been approved by the department, may elect to continue instruction pursuant to the teachout plan or may decline to continue instruction and may instead apply for a full refund under this section. The option to apply for a refund shall extend to the end of the first week of instruction at the teachout school.

b. A student who was enrolled in a school which has not closed or

ceased operation is entitled to a refund computed in accordance with the refund policy established by subdivision three of section five thousand two of this article.

c. A student who was enrolled in a school at the time the school closes or ceases operation is entitled to a refund of the full amount of prepaid tuition. In addition, commencing September first, nineteen hundred ninety-three, a student who drops out of a school, where such school closes within thirty days of the student's termination and prior to completion of such student's program as specified in the enrollment agreement, shall be entitled to a full refund of all tuition, fees and book charges paid for by or on behalf of the student in cash or in loans, excluding funding provided by any government agencies.

d. A student who was enrolled in a school which has not closed or ceased operation, and who has dropped out, is entitled to a full refund of all tuition, fees and other required costs paid by the student if the student has submitted a complaint form to the commissioner and the commissioner has determined that a violation of this article has occurred which warrants a refund. The commissioner shall promulgate regulations identifying those violations that warrant a refund.

e. Commencing September first, nineteen hundred ninety-three, a student who drops out of a school, which subsequently closes, and who is owed a refund for the failure of such school to follow the provisions enumerated in subdivision three of section five thousand two of this article shall be eligible for a refund from the tuition reimbursement fund according to the provisions of subdivision three of section five thousand two of this article.

f. Commencing September first, nineteen hundred ninety-three, any student enrolled in a school based upon an ability to benefit examination shall be eligible for a full refund, regardless of whether the student is currently enrolled, graduated or dropped out, if the school enrolled the student contrary to the provisions of the approved entrance requirements and the student complies with the requirements of subdivision one of section five thousand three of this article.

5. a. For a student who had been enrolled in a school that has not closed or ceased operation, the refund shall be paid as follows:

(1) guaranteed student loans, if any, in which case the commissioner shall notify the student of such payment and shall be paid directly to the lender or guarantee agency where appropriate;

(2) actual personal tuition expenditures, if any; and

(3) tuition assistance program awards and other governmental aid.

b. For schools that have closed or ceased operation, the commissioner shall refund actual personal tuition, fees and book expenditures to the student. The repayment of any loans incurred by the student as part of the actual personal tuition, fees and book expenditures shall be paid directly to the lender or the guarantee agency where appropriate.

6. a. Where a claim is paid to a student of an operating school, the commissioner shall immediately notify the school.

b. Within ten days of the receipt of the notice, the school shall either request a hearing to challenge the commissioner's determination that a refund was owed to the student or reimburse the fund the amount paid to the claimant plus a penalty up to two times such amount. This payment shall also incur interest for each day it remains unpaid at an annual interest rate of one percent above the prime rate. The commissioner may promulgate streamlined procedures for conducting hearings pursuant to this paragraph. Any penalty assessed under this paragraph shall be in addition to any other penalties assessed pursuant to this article. Notwithstanding any other provision of law, penalties and interest paid pursuant to this paragraph shall accrue to the credit of the proprietary vocational school supervision account to support the costs associated with the hearings authorized in this subdivision.

7. Notwithstanding the notice procedures described in subdivision three of this section, in the event of a school closing, the commissioner on his or her own initiative may take appropriate action in accordance with this section to process refund claims on behalf of all of the students of the closed school.

8. Assignment of rights. Persons and entities receiving refunds under this section shall be deemed to have assigned or subrogated their tuition reimbursement rights to the commissioner on behalf of the tuition reimbursement fund only for the amount refunded by the tuition reimbursement fund. Within ninety days of any refund made pursuant to this section, the commissioner or the attorney general shall take appropriate action to recover the total amount of the refunds made, plus administrative costs, from the school.

9. a. A student whose loan liability is exempted pursuant to former section six hundred eighty-three of this chapter and is entitled to or owed a refund shall transfer to the higher education services corporation the right to claim the refund owed and due from the tuition reimbursement fund. In such event, the corporation shall be entitled to receive a refund for that portion of the claim not paid to the corporation by the United States Secretary of Education pursuant to the federal guaranteed loan program.

b. Any amounts remaining in the tuition reimbursement fund as of June first, nineteen hundred ninety-three and on every March thirty-first thereafter, shall be made available to the higher education services corporation for payment of student loans on which collection activity has ceased pursuant to the provisions of subdivision six of former section six hundred eighty-three of this chapter. No amounts shall be paid to the higher education services corporation for loans on which collection activity has ceased because of the operation of section 437 of the Higher Education Act of 1965, as amended.

10. Management of the tuition reimbursement account. a. As used in this subdivision, net balance is defined as the actual cash balance of the account as determined by the commissioner on June thirtieth, nineteen hundred ninety-three and every three months thereafter. For the purpose of calculating the net balance, the commissioner shall not take into consideration any refunds made from the account pursuant to paragraphs d and f of subdivision four of this section for the year immediately preceding the date on which the calculation is made.

b. In the event that the account has accumulated a net balance in excess of one million eight hundred thousand dollars, the commissioner shall, with the approval of the director of the budget, waive an amount not to exceed the amount due for the next quarterly assessment pursuant to this section and subdivision nine of section five thousand one of this article for schools which have paid sixteen quarters or more of assessments only. In such event, payment of future quarterly assessments shall be suspended for schools which have paid sixteen quarters or more of assessments until the net balance of the account falls below one million three hundred thousand dollars.

c. In the event the net balance of the account falls below one million three hundred thousand dollars, if the quarterly assessment has been suspended for schools which have paid sixteen quarters or more of assessments pursuant to paragraph b of this subdivision, it shall be reinstated for the next quarterly assessment and all subsequent quarterly assessments until the account has accumulated a net balance in excess of one million eight hundred thousand dollars.

d. Notwithstanding the provisions of paragraph b of this subdivision, in the event that the balance of the account is in excess of one million three hundred thousand dollars, all schools licensed after June thirtieth, nineteen hundred ninety-nine shall be required to pay into the account the equivalence of three years of annual assessments over a five year period.

e. Notwithstanding the provisions of paragraph b of this subdivision all schools licensed after June thirtieth, nineteen hundred ninety-three and before July first, nineteen hundred ninety-nine will be required to pay into the account the equivalence of three years of annual assessments within four years of the effective date of this paragraph. This amount to be assessed shall be determined based upon the school's gross tuition in its first three years of licensure.

g. In the event that the balance of the tuition reimbursement account is equal to or in excess of two million dollars, the amounts assessed

the schools in accordance with the provisions of paragraphs d and e of this subdivision shall be deposited directly to the proprietary vocational school supervision account.

h. The commissioner may annually apportion from the account an amount up to two hundred thousand dollars for the purpose of securing, scanning and otherwise making student records from closed schools available to students who attended such schools. Provided, however, that in no case shall such apportionment cause the account to fall below the balance set forth in paragraph c of this subdivision, nor shall such apportionment cause schools whose quarterly assessments have been suspended to pay additional quarterly assessments.

11. Fund audit. The state comptroller shall audit or cause to be audited the tuition reimbursement fund once every two years and produce an audited financial statement according to generally accepted accounting principles.

12. New schools. Within the first year that a school begins licensed operation, the commissioner shall assess such school an amount to be deposited into the fund in an amount to be determined by the commissioner.