

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Maryland Higher Education Commission
(DLS Control No. 15-192)**

Overview and Legal and Fiscal Impact

The regulations implement the State Authorization Reciprocity Agreement (SARA), which facilitates the offering of postsecondary distance education courses and programs in a state other than the state in which the distance education originates.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Maryland Higher Education Commission:

Academic Regulations: Requirements for Authorization of Out-of-State Degree-Granting Institutions to Operate in Maryland: COMAR 13B.02.01.02, .03, .04-1, and .07-1

Approval and Oversight of In-State SARA Institutions:
COMAR 13B.02.05.01 through .09

Fully Online Programs: Registration: COMAR 13B.05.01.01 and .02

Legal Analysis

Background

SARA is an agreement among member states, districts, and territories that facilitates the offering of postsecondary distance education courses and programs in a state other than the state in which the distance education originates. The members of SARA are the states, districts, and territories, while the institutions of higher education operate under, or participate in, the agreement. SARA is overseen by a national council and administered by four regional compacts: the Midwestern Higher Education Compact; the New England Board of Higher Education; the Western Interstate Commission for Higher Education; and the Southern Regional Education Board (SREB) – of which Maryland is a member. Membership in SARA is voluntary and each institution of higher education must apply separately. As of October 2, 2015, 29 states have been approved as members of SARA and 463 institutions operate under SARA.

At the August 24, 2015 meeting of the Maryland Higher Education Commission, the commissioners voted to join SARA, with an anticipated effective date of January 1, 2016.

Summary of Regulations

The regulations implement SARA. Provisions of the regulations include:

- clarifying that institutions that have a physical presence in the State, regardless of whether they operate under SARA, must obtain a certificate of approval from the commission;
- increasing the *de minimis* number of students (from 5 to 10) who are placed in an internship, practicum, or field experience and that trigger physical presence, subject to specified exceptions;
- authorizing out-of-state SARA institutions to provide distance education in the State if Maryland is a member of SARA;
- designating the commission as the portal agency for SARA questions, complaints, and other communications, and authorizing the Secretary of Higher Education to act on behalf of the commission in this regard;
- specifying that the regulations do not exempt in-state SARA institutions from the requirements of program approval under §§ 11-202 and 11-206 of the Education Article;
- setting forth the procedures to be followed and conditions to be met for an in-state institution that seeks approval from the commission to participate in SARA;
- setting forth renewal procedures and conditions for participation in SARA;
- setting forth annual fees for participation;
- authorizing student complaints directly to the commission under specified circumstances;
- requiring institutions to comply with the Secretary's findings relating to student complaints or suffer consequences, potentially including termination of the institution's participation in SARA;
- authorizing the Secretary to issue a notice of deficiencies, authorize an institution to participate in SARA on a provisional status, or terminate an institution's participation in SARA;
- providing for administrative review, including a hearing before the commission, of the Secretary's decision relating to denial of an application, denial of renewal, or termination of participation; and

- exempting institutions that participate in SARA, if Maryland is a member of SARA, from the requirement to register with the commission prior to offering distance education to Maryland students.

Legal Issue

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The commission cites §§ 11-105(u), 11-202, and 11-202.2 of the Education Article as statutory authority for the regulations. Section 11-105(u) authorizes the commission to adopt regulations necessary to carry out its powers and duties. Section 11-202 requires an institution of postsecondary education that operates in the State to first obtain a certificate of approval from the commission, subject to specified exceptions. Section 11-202.2, as enacted by Chapter 175 of 2015, requires institutions that offer fully online distance education programs to register with the commission, unless the institution is subject to program review, participates in the SREB Electronic Campus, or participates in SARA.

Although not cited by the commission, § 11-105(m)(3) of the Education Article, as enacted by Chapter 175, authorizes the commission to participate in SARA.

With the addition of § 11-105(m)(3) of the Education Article, as enacted by Chapter 175, this authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

The commission notes that despite the fact that § 11-202.2(b)(2) of the Education Article does not explicitly state that the exemption for an institution that offers fully online distance education programs from the requirement to register with the commission is contingent upon the State's membership in SARA, the purpose and structure of Chapter 175, as well as the legislative intent of the law, clearly mandate such a conclusion. Further, the commission reports that language contained within the regulations that makes the effectiveness of certain provisions of the regulations contingent on Maryland joining SARA will be removed as a non-substantive revision at the commission's final adoption of the regulations. Therefore, any inconsistency that may currently exist will cease to exist on final adoption of the regulations.

Additionally, in response to a suggestion from the Department of Legislative Services, the commission agrees to add § 11-105(m)(3) of the Education Article, as enacted by Chapter 175, as statutory authority for the regulations.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations implement Chapters 175 and 176 of 2015 (Senate Bill 496 and House Bill 672), which authorized the commission to enter into the State Authorization Reciprocity Agreement (SARA). The commission advises that special fund revenues from out-of-state institutions decrease by an estimated \$365,400 in fiscal 2017; this will be partly offset by an increase in special fund revenues of approximately \$90,000 from in-state institutions.

The Department of Legislative Services agrees with the revenue amounts but advises that depending on the timing of when Maryland officially joins SARA, the impact could begin in fiscal 2016. The net decrease in special fund revenues has already been accounted for in the fiscal and policy notes for the enabling legislation beginning in fiscal 2017. The fiscal and policy notes for Senate Bill 496 and House Bill 672 of 2015 noted a special fund revenue decrease beginning in fiscal 2017 with future year decreases ranging from \$415,400 in fiscal 2018 to \$532,400 in fiscal 2020. The fiscal and policy notes also noted that this loss in special fund revenue could be partially or fully mitigated by SARA fees charged by the commission to in-state institutions, although no specific fee schedule was estimated. (In-state institutions will likely realize net savings in fees due to only paying SARA fees rather than fees to each SARA state in which it offers online programs.) The fiscal and policy notes assumed that Maryland's membership in SARA would be effective July 1, 2016. However, the commission has set a goal of January 1, 2016, for SARA membership to become effective. The existing processes for Certificate of Approval and Online Registration require annual payment of fees each summer, which has already occurred for fiscal 2016. The commission advises that it does not plan to retroactively prorate SARA fees for institutions located in SARA member states during fiscal 2016. Thus, the first impact will be in fiscal 2017.

The fiscal and policy notes also estimated that the commission would require an additional full-time education specialist to implement SARA at an estimated annual cost of approximately \$75,000. However, the Acting Secretary's memo to the commission regarding these regulations noted that joining SARA would "definitely lower the current work load of MHEC employees"; thus, Legislative Services now estimates no additional expenditures are required as a result of joining SARA.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The commission advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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