Maryland General Assembly
Department of Legislative Services

Proposed Regulations
Maryland Higher Education Commission
(DLS Control No. 15-304)

Overview and Legal and Fiscal Impact

These regulations set forth the criteria used by the Secretary of Higher Education in determining the amount of financial guarantees that private career schools must provide under § 11-203 of the Education Article.

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:

Nonpublic Schools: Minimum Requirements for Private Career Schools: COMAR 13B.01.01.02
Minimum Requirements for Private Career Schools: COMAR 13B.01.01.04
Minimum Requirements for Private Career Schools: COMAR 13B.01.01.19

Legal Analysis

Summary of Regulations

Under § 11-203 of the Education Article and current regulations, the Secretary generally requires private career schools to provide financial guarantees, in the form of performance bonds or letters of credit, to ensure that the schools fulfill their obligations to students in the event of school closures. However, the specific standards that the Secretary applies to determine the necessity and amount of a school's financial guarantee exist only in guideline format. These regulations set forth the criteria used by the Secretary in determining the amount of financial guarantees that private career schools must provide.

The regulations govern the financial guarantees that are required for private career schools to operate in Maryland. The amount of the financial guarantee is set using three main criteria: (1) the category of a school; (2) how long a school has been in operation; and; (3) the financial viability of a school. Non-Title IV schools have higher financial guarantee requirements than Title IV schools, and branch campus Title IV schools have higher financial guarantee requirements than main campus Title IV schools. Schools that have been in operation for at least 10 years have significantly lower financial guarantee requirements than schools that are newly opened. The regulations set financial viability standards that require a school's financial statements for each of the two most recent years to have income that exceeded expenditures and at least a 1:1 ratio of total current assets to total current liabilities. The financial guarantee requirements are significantly higher for schools that do not meet the financial viability standards.

In addition to formalizing the standards governing financial guarantees, the proposed regulations alter the manner in which the guarantees are calculated for Title IV schools. For certain financially sound schools participating in federal student financial aid under Title IV of the Higher Education Act of 1965, the amount of the financial guarantee required under the regulations is reduced by the amount of the financial aid the school receives on behalf of its students. The reason for this deduction is that, in the event of a school's closure, students are eligible to discharge their loans under Title IV. For example, a non-Title IV school that has been in operation for over 10 years but does not meet certain financial viability standards must provide a financial guarantee in an amount sufficient to cover 30% of the *total* tuition liability of the school. In contrast, a main campus Title IV school that has been in operation for over 10 years that also does not meet certain financial viability standards must provide a financial guarantee in an amount sufficient to cover 50% of the total *non-Title IV* tuition liability of the school.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The Higher Education Commission cites §§ 11-105(u), 11-201, 11-202, and 11-203 of the Education Article as statutory authority for the regulations. Section 11-105(u) gives the commission authority to adopt any rule or regulation necessary to carry out its powers and duties. Section 11-203 authorizes the commission to require any institution of postsecondary education that is required to obtain a certificate of approval, including private career schools, to furnish a performance bond or other form of financial guarantee. Any bond or guarantee must be in the form and amount the Secretary requires. The remaining cited authority is not relevant to these regulations.

The relevant cited authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

In response to suggestions from the Department of Legislative Services, staff for the commission agrees to make the following changes to the regulations:

- for consistency with other provisions in the regulations, in Regulation .19D(1)(a) and (b), the amount of the financial guarantee will be listed first followed by the phrase regarding whether the school meets financial viability standards; and

- making several technical corrections to Regulations .02B(6-1)(b), .19A(4)(e), and .19C(3).

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The commission advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs, as the private career schools are the entities required to obtain the financial guarantee and commission staff can implement changes in determining the amount of financial guarantee a school must provide using existing resources.

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 impact on small businesses even though certain private career schools may be able to obtain the required financial guarantee at a lower cost due to qualifying for a lower guarantee amount under the regulations. The Department of Legislative Services concurs.

Contact Information

Legal Analysis: Dana Tagalicod – (410) 946/(301) 970-5350
Fiscal Analysis: Caroline L. Boice – (410) 946/(301) 970-5510