

MARYLAND REGISTER

## Proposed Action on Regulations

<b>Transmittal Sheet</b>  <b>PROPOSED OR REPROPOSED</b>  <b>Actions on Regulations</b>	<b>Date Filed with AELR Committee</b>	<b>TO BE COMPLETED BY DSD</b>
	10/16/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

**1. Desired date of publication in Maryland Register: 11/30/2015**

**2. COMAR Codification**

**Title Subtitle Chapter Regulation**

13B	01	01	02
13B	01	01	04
13B	01	01	19

**3. Name of Promulgating Authority**

Maryland Higher Education Commission

**4. Name of Regulations Coordinator**

Christine Wellons

**Telephone Number**

410-767-3313

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6 N. Liberty Street

<b>City</b>	<b>State</b>	<b>Zip Code</b>
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christine.wellons@maryland.gov

**5. Name of Person to Call About this Document**

Christine Wellons

**Telephone No.**

410-767-3313

**Email Address**

christine.wellons@maryland.gov

**6. Check applicable items:**

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 10/14/15.

Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R  
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

**7. Is there emergency text which is identical to this proposal:**

Yes  No

**8. Incorporation by Reference**

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

**9. Public Body - Open Meeting**

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

**10. Children's Environmental Health and Protection**

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

**11. Certificate of Authorized Officer**

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Christine Wellons, Assistant Attorney General, (telephone #410-767-3313) on 10/14/15. A written copy of the approval is on file at this agency.

**Name of Authorized Officer**

Mark C. Blom

**Title**

Principal Counsel

**Telephone No.**

410-767-3311

**Date**

10/14/15

**Title 13B**  
**B MARYLAND HIGHER EDUCATION COMMISSION**

**Subtitle 01 NONPUBLIC SCHOOLS**

**13B.01.01 Minimum Requirements for Private Career Schools**

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**13B.01.01 Minimum Requirements for Private Career Schools**

**Subtitle 01 NONPUBLIC SCHOOLS**

**13B.01.01 Minimum Requirements for Private Career Schools**

Authority: Education Article, §§11-105(u), 11-201, 11-202, and 11-203, Annotated Code of Maryland.

**Notice of Proposed Action**

[]

The Maryland Higher Education Commission proposes to amend Regulations .02 and .04 and adopt new Regulation .19 under COMAR 13B.01.01 Minimum Requirements for Private Career Schools.

This action was considered at an open meeting of the Maryland Higher Education Commission held on September 23, 2015, pursuant to General Provisions Article, §3-301, Annotated Code of Maryland.

**Statement of Purpose**

The purpose of this action is to set forth the criteria used by the Secretary in determining the amount of financial guarantees that private career schools must provide under Education Article, §11-203, Annotated Code of Maryland.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.**

The proposed action will reduce the costs currently incurred by certain private career schools in connection with obtaining financial guarantees under Education Article, §11-203, Annotated Code of Maryland.

Revenue (R+/R-)

## II. Types of Economic Impact.

	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	NONE	
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:		
Reduction in Costs Related to Financial Guarantees	(+)	Indeterminate
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

## III. Assumptions. (Identified by Impact Letter and Number from Section II.)

D. Under current MHEC policy, the amount of a private career school's financial guarantee is unrelated to whether the school participates in federal student financial aid and, thus, whether the school's students qualify for federal student loan discharges. Under the proposed regulations, a private career school that qualifies for a reduction of its financial guarantee amount due to, inter alia, its participation in federal student financial aid, likely will incur fewer costs associated with obtaining a financial guarantee. Typically, private career schools obtain their financial guarantees in the form of performance bonds issued by insurance companies. In general, the insurance company will will require a lower payment for a lower performance bond amount.

### **Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

### **Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

### **Opportunity for Public Comment**

Comments may be sent to Jennifer Vest Frank, Assistant Secretary of Higher Education, Maryland Higher Education Commission, 6 N. Liberty St., 10th Floor, Baltimore, MD 21201, or call 410-767-3041, or email to [jennifer.frank@maryland.gov](mailto:jennifer.frank@maryland.gov), or fax to . Comments will be accepted through December 30, 2015. A public hearing has not been scheduled.

## Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2016

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

General funds.

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

Small businesses, other than those in the regulated industry, are not affected by the regulations.

G. Small Business Worksheet:

Attached Document:

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### 13B.01.01 Minimum Requirements for Private Career Schools

Authority: Education Article, §§11-105(u), 11-201, 11-202, and 11-203, Annotated Code of Maryland.

#### .02 Definitions.

A. (text unchanged)

B. (1)—(6) (text unchanged)

(6-1) "Branch campus Title IV school" means a school that:

(a) Is recognized as a branch campus, or as an additional location of a main campus, by an accrediting body recognized by the U.S. Department of Education;

(b) Has a main campus that is certified by the U. S. Secretary of Education to participate in federal financial aid programs under Title IV of the Higher Education Act of 1965; and

(c) Is geographically apart and independent of its main campus; and

(d) Has a location that:

(i) Is permanent in nature;

(ii) Has its own faculty and administrative or supervisory organization; and

(iii) Has its own budgetary and hiring authority.

(7) – (19) (text unchanged)

(19-1) "Main campus Title IV school" means a school that is:

(a) Accredited as a main campus by an accrediting body recognized by the U.S. Department of Education; and

(b) Certified by the U. S. Secretary of Education to participate in federal financial aid programs under Title IV of the Higher Education Act of 1965.

(19-2) "Non-Title IV school" means a school that does not participate as a main campus or as a branch campus in federal financial aid programs under Title IV of the Higher Education Act of 1965.

(20) – (31) (text unchanged)

(32) "Title IV school" means a main campus Title IV school or a branch campus Title IV school.

(33) "Total non-Title IV tuition liability" means a school's total tuition liability minus the amount of Title IV federal financial aid received by the school on behalf of its students.

(34) "Total tuition liability" means the amount of tuition due to a school at its maximum permitted enrollment, which is the sum of: each program's tuition multiplied by the maximum permitted enrollment of that program.

#### **.04 School Approval Process.**

A. (text unchanged)

B. Initial Approval to Operate.

(1) (text unchanged)

(2) In addition to documents required by the application form, the application shall include the following items:

(a) (text unchanged)

(b) A financial statement described in §B(11) of this regulation or a financial guarantee described in [§B(12) of this] regulation .19 of this chapter;

(c) – (e) (text unchanged)

(3) – (5)

(6) Financial Requirement.

[(a)] Before receiving initial approval, each school shall:

(a) [make] *Make* a payment to the Guaranty Student Tuition Fund in [accord] *accordance* with the schedule in Regulation .18E(4) of this chapter[.]; *and*

(b) [The Secretary may require a school to forward a financial guarantee in the form of a renewable performance bond or an irrevocable letter of credit. The bond or letter of credit shall be in an amount and under terms and conditions determined by the Secretary, and it shall be made payable to the Secretary of Higher Education. The completed bond or letter of credit is to be forwarded to the Secretary of Higher Education.] *Provide a financial guarantee in accordance with regulation .19 of this chapter.*

(7) – (11) (text unchanged)

[(12) A financial guarantee under §B(2)(b) of this regulation shall be in the form of a bond or letter of credit that is sufficient to cover the full tuition liability of the school. The bond or letter of credit shall be in the amount and under the terms and conditions determined by the Secretary, and made payable to the Secretary of Higher Education.]

C. Renewal of Approval to Operate.

(1) – (5) (text unchanged)

(6) Financial Requirement. The Secretary [may] *shall* require a school to forward a financial guarantee [in the form of a performance bond or an irrevocable letter of credit if, at the time of renewal of authority to operate or during the period of a school's operation, the Secretary determines the financial condition of the school warrants this action. The bond or letter of credit shall be in an amount and under terms and conditions determined by the Secretary, and made payable to the Secretary of Higher Education. The completed bond or letter of credit is to be forwarded to the Secretary of Higher Education. Failure to obtain a required bond or letter of credit shall result in a denial of the school's renewal of approval to operate] *described in regulation .19 of this chapter.*

(7) (text unchanged)

D. Change of Ownership.

(1) – (4) (text unchanged)

(5) Financial Requirement. The Secretary [may] *shall* require a prospective owner of a school to forward a financial guarantee [in the form of a performance bond or an irrevocable letter of credit. The bond or letter of credit shall be in an amount and under terms and conditions determined by the Secretary, and made payable to the Secretary of Higher Education. The completed bond or letter of credit is to be forwarded to the Secretary of Higher Education] *described in regulation .19 of this chapter.*

E. (text unchanged)

#### **.19 Financial Guarantee.**

A. Whenever a financial guarantee is required by this chapter, it shall be:

(1) *In the form of a performance bond or an irrevocable letter of credit;*

(2) *Made under the terms and conditions determined by the Secretary, including the conditions that the school will:*

(a) *Perform faithfully all agreements or contracts it makes with its students; and*

(b) *Comply with the Education Article of the Annotated Code of Maryland and with this chapter;*

(3) *Made payable to the Secretary, and provided to the Secretary;*

(4) *In the amount the Secretary requires, which at a minimum shall be:*

(a) *The amount prescribed by §B of this regulation, if the school is a non-Title IV school;*

(b) *The amount prescribed by §C of this regulation, if the school is a main campus Title IV school;*

(c) *The amount prescribed by §D of this regulation, if the school is a branch campus Title IV school;*

(d) The amount prescribed by §E of this regulation, if the school is a Title IV school that has been notified by the U.S. Department of Education of an adverse, or potentially adverse, action affecting the school's participation in Title IV; or

(e) The amount prescribed by §F of this regulation, if the school delivers its programs in whole or in part by distance education.

**B. Financial Guarantee Amount – Non-Title IV Schools.**

(1) A non-Title IV school's 1<sup>st</sup> through 5<sup>th</sup> years of operation.

(a) This §B(1) applies to a non-Title IV school during its 1<sup>st</sup> through 5<sup>th</sup> years of operation.

(b) If the school collects tuition in multiple installments from or on behalf of its students, the school shall provide a financial guarantee in an amount sufficient to cover:

(i) 100% of the total tuition liability of the school, if the school does not meet financial viability standards set forth in §G of this regulation; or

(ii) 50% of the total tuition liability of the school, or a greater amount if deemed necessary by the Secretary, if the school meets the financial viability standards set forth in §G of this regulation.

(c) If the school does not collect tuition in multiple installments from or on behalf of its students, the school shall provide a financial guarantee in an amount sufficient to cover 100% of the total tuition liability of the school.

(2) During a non-Title IV school's 6<sup>th</sup> through 10<sup>th</sup> years of operation.

(a) This §B(2) applies to a non-Title IV school during its 6<sup>th</sup> through 10<sup>th</sup> years of operation.

(b) If the school collects tuition in multiple installments from or on behalf of students, the school shall provide a financial guarantee in an amount sufficient to cover:

(i) 100% of the total tuition liability of the school, if the school does not meet the financial viability requirements set forth in §G of this regulation; or

(ii) 30% of the total tuition liability of the school, or a greater amount if deemed necessary by the Secretary, if the school meets the financial viability requirements set forth in §G of this regulation.

(c) If the school does not collect tuition in multiple installments from or on behalf of its students, the school shall provide a financial guarantee in an amount sufficient to cover 100% of the total tuition liability of the school.

(3) After a non-Title IV school's 10<sup>th</sup> year of operation.

(a) This §B(3) applies to a non-Title IV school after its 10<sup>th</sup> year of operation.

(b) If the school collects tuition in multiple installments from or on behalf of students, the school shall provide:

(i) A financial guarantee in an amount sufficient to cover 30% of the total tuition liability of the school, or a greater amount if deemed necessary by the Secretary, if the school does not meet the financial viability requirements set forth in §G of this regulation; or

(ii) No financial guarantee, unless the Secretary deems one necessary, if the school meets the financial viability requirements set forth in §G of this regulation.

(c) If the school does not collect tuition in multiple installments from or on behalf of its students, the school shall provide a financial guarantee in an amount sufficient to cover 100% of the total tuition liability of the school.

**C. Financial Guarantee Amount – Main Campus Title IV School.**

(1) During a main campus Title IV school's 1<sup>st</sup> through 5<sup>th</sup> years of operation, and after at least 1 year of its operation as a main campus Title IV school, the school shall provide a financial guarantee in an amount sufficient to cover:

(a) 100% of the total tuition liability of the school, if the school does not meet the financial viability standards set forth in §G of this regulation; or

(b) 100% of the total non-Title IV tuition liability of the school, or a greater amount if deemed necessary by the Secretary, if the school meets the financial viability standards set forth in §G of this regulation.

(2) During a main campus Title IV school's 6<sup>th</sup> through 10<sup>th</sup> years of operation, and after at least 1 year of its operation as a main campus Title IV school, the school shall provide a financial guarantee in an amount sufficient to cover:

(a) 100% of the total non-Title IV tuition liability of the school, if the school does not meet financial viability requirements set forth in §G of this regulation; or

(b) 50% of the school's total non-Title IV tuition liability, or a greater amount if deemed necessary by the Secretary, if the school meets the financial viability requirements set forth in §G of this regulation.

(3) After a non-Title IV school's 10<sup>th</sup> year of operation, and after at least one year of its operation as a main campus Title IV school, the school shall provide:

(a) A financial guarantee in an amount sufficient to cover 50% of the total non-Title IV tuition liability of the school, or a greater amount if deemed necessary by the Secretary, if the school does not meet the financial viability requirements set forth in §G of this regulation; or

(b) No financial guarantee, unless one is deemed necessary by the Secretary, if the school meets the financial viability requirements set forth in §G of this regulation.

**D. Financial Guarantee Amount – Branch Campus Title IV School.**

(1) During a branch campus Title IV school's 1<sup>st</sup> through 2<sup>nd</sup> years of operation in Maryland, the school shall provide:

(a) If the school does not meet minimum financial viability standards set forth in §G of this regulation, a financial guarantee in an amount sufficient to cover 100% of the total tuition liability of the school; or  
(b) If the school meets the minimum financial viability standards set forth in §G of this regulation, unless the Secretary determines that financial conditions warrant a greater amount, a financial guarantee in an amount sufficient to cover 50% of the total tuition liability of the school.

(2) After a branch campus Title IV school's 2nd year of operation in Maryland, and before the school's main campus has operated for 10 years, the school shall provide a financial guarantee in an amount sufficient to cover:

(a) 100% of the total non-Title IV tuition liability of the school, if the school does not meet the financial viability requirements set forth in §G of this regulation; or  
(b) 50% of the total non-Title IV tuition liability of the school, or a greater amount if deemed necessary by the Secretary, if the school meets the financial viability standards set forth in §G of this regulation.

(3) After a branch campus Title IV school's 2nd year of operation in Maryland, and once the school's main campus has operated for at least 10 years, the school:

(a) Shall provide a financial guarantee in an amount sufficient to cover 50% of the total non-Title IV tuition liability of the school, if the school does not meet financial viability requirements set forth in §G of this regulation; or

(b) Shall be released from the financial guarantee requirement, unless the Secretary determines that one is necessary, if the school meets the financial viability requirements set forth in §G of this regulation.

**E. Financial Guarantee Amount – Title IV Schools Notified of Potentially Adverse Action by the U.S. Department of Education.**

(1) If the U.S. Department of Education notifies a Title IV school that the school is subject to an adverse or potentially adverse action, including any action that limits, suspends, terminates, or otherwise negatively affects the school's participation in Title IV, the school must notify the Commission in accordance with regulation .06 of this chapter.

(2) Upon receipt of the school's notice under §E(1), or on the Secretary's own initiative, the Secretary may require the school to provide a financial guarantee in an amount deemed necessary by the Secretary to protect students, up to 100% of the school's total tuition liability.

**F. Financial Guarantee Amount – Schools Delivering Programs in Whole or in Part by Distance Education.**

(1) A school that delivers a program in whole or in part by distance education shall provide a financial guarantee, regardless of whether a financial guarantee would otherwise be required under §§ B – E of this regulation.

(2) The financial guarantee of a school that delivers a program in whole or in part by distance education shall be in the amount prescribed by §§ B – E of this regulation, plus an amount sufficient to cover the sum of: the tuition of each program delivered in whole or in part by distance education, multiplied by the maximum permissible enrollment for that program.

**G. Reduced or Eliminated Financial Guarantees Based on Financial Viability.**

(1) Upon submission of its annual report under regulation .06 of this chapter, a school may request in writing that the Secretary reduce or eliminate the school's financial guarantee amount, in accordance with the criteria set forth in §§ B – F of this regulation.

(2) The school's request must include the two most recent audited financial statements of the school, and of any corporate parent or holding company of the school.

(3) The Secretary may grant the school's request if the Secretary finds that:

(a) The financial statements and other relevant financial information, including external accounting reports, demonstrate that the school and its ownership meet the financial viability requirements set forth in §G(4) of this regulation, operate in accordance with sound principles of financial management, and maintain financial resources adequate for the satisfactory conduct of the school; and

(b) A reduction or elimination of the financial guarantee is appropriate under the criteria set forth in §§ B – F of this regulation.

(4) **Financial Viability Requirement.** A school is considered financially viable if its financial statements, and those of its corporate parent or holding company, demonstrate that the school and its ownership, for each of the 2 most recent years:

(a) Had income that exceeded expenditures; and

(b) Maintained at least a 1:1 ratio of total current assets to total current liabilities.

JENNIE C. HUNTER-CEVERA, Ph.D.  
Acting Secretary of Higher Education