

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	05/05/2017	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 6/9/2017

2. COMAR Codification

Title Subtitle Chapter Regulation

13B 02 06 .01-.13

3. Name of Promulgating Authority

Maryland Higher Education Commission

4. Name of Regulations Coordinator

Priscilla A Moore

Telephone Number

410-767-3312

Mailing Address

6 N. Liberty Street

City	State	Zip Code
Baltimore	MD	21201

Email

priscilla.moore@maryland.gov

5. Name of Person to Call About this Document

Emily Dow

Telephone No.

410-767-3041

Email Address

emily.dow@maryland.gov

6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Subtitle 02 ACADEMIC REGULATIONS

13B.02.06 Financial Guarantees and the Maryland Guaranty Student Tuition Fund for For-profit Institutions of Higher Education

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

Notice of Proposed Action

□

The Maryland Higher Education Commission proposes to add Chapter 6 Financial Guarantees and the Maryland Guaranty Student Tuition Fund for For-profit Institutions of Higher Education under Subtitle 02 ACADEMIC REGULATIONS in Title 13B Maryland Higher Education Commission.

This action was considered by the Commission at an open meeting held on April 26, 2017, notice of which was given as required by the General Provisions Article, §3-302, Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to implement the Financial Guarantees and the Maryland Guaranty Student Tuition Fund for For-profit Institutions of Higher Education under §11-203 of the Education Article of the 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.

Each for-profit school operating in Maryland will be required to pay a financial assessment equal to 25% of the adjusted gross tuition. Based on the most recent available information (College Navigator: 2015 Enrollment, and 2015-2016 Tuition, using data for the highest enrolled program), this imposes an assessment for the following schools in the following amount.

- Brightwood College: \$4,900,443.00
- Fortis College: \$1,922,745.50
- Lincoln College of Technology: \$5,432,751.00
- Stratford University: \$12,497,726.25
- Kaplan University: \$2,644,760.00
- Strayer University: \$9,669,618.75

II. Types of Economic Impact.

Revenue (R+/R-)	
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:	(-)	25% of tuition revenue
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	(+)	Varies

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

D. Private Career Schools must provide a financial assessment or performance bond equal to 25% of their tuition revenue.

F. Students at a for-profit college or university that closes will be able to receive a tuition refund.

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 Emily Dow, Assistant Secretary of Academic Affairs, Maryland Higher Education Commission, 6 N Liberty Street, 10th Floor, Baltimore, MD 21201, or call 410-767-3041, or email to emily.dow@maryland.gov, or fax to 410-332-0270. Comments will be accepted through July 9, 2017. A public hearing has not been scheduled.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2018
 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.

Most for-profit institutions are not considered a small business.

G. Small Business Worksheet:

Attached Document:

Title 13B

MARYLAND HIGHER EDUCATION COMMISSION

Subtitle 02 ACADEMIC REGULATIONS

Chapter 06 Financial Guarantees and the Maryland Guaranty Student Tuition Fund for For-profit Institutions of Higher Education.

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

.01 Purpose.

The purpose of this chapter is to:

A. *Provide for the assessment of fees on for-profit institutions of higher education under the Education Article, § 11-203, Annotated Code of Maryland;*

B. *Provide for the filing of certain financial guarantees by for-profit institutions of higher education under the Education Article, § 11-203, Annotated Code of Maryland;*

C. *Provide for the creation and administration of the Maryland Guaranty Student Tuition Fund for For-profit Institutions of Higher Education; and*

D. *Set forth standards and procedures for processing claims filed by students of for-profit institutions of higher education under the Education Article, § 11-203, Annotated Code of Maryland.*

.02 Definitions.

A. *In this chapter, the following terms have the meanings indicated.*

B. *Terms Defined.*

(1) *"Adjusted gross tuition and fees" means all revenues received on a cash or accrual accounting basis, less any refunds paid to students, for tuition and fees for all instructional programs or courses enrolled in by students, except for charges for materials, supplies, and books that have been purchased by, and are the property of, a student.*

(2) *"Assessment year" means a 12-month period from July 1 through June 30 in which the Secretary may levy assessments on for-profit institutions of higher education as provided in this chapter.*

(3) *"Commission" means the Maryland Higher Education Commission.*

(4) *"Discharge" means the release of a borrower from the obligation to repay his or her loan for any reason.*

"Discharge" includes, but is not limited to:

(a) *Loan forgiveness;*

(b) *A discharge through the Closed School Discharge program or the Borrower Defense to Repayment program of the USED; and*

(c) *Loan forgiveness or discharge through the federal Department of Veterans Affairs, federal Department of Defense, or any other federal agency.*

(5) *"Financial guarantee" means a performance bond, or irrevocable letter of credit, in the form and amount the Secretary requires.*

(6) "For-profit institution of higher education" has the meaning stated in Education Article, §10-101, Annotated Code of Maryland.

(7) "Fund" means the Maryland Guaranty Student Tuition Fund for For-profit Institutions of Higher Education.

(8) "Lender" means an entity, institution, or government that lends funds to a student, or on behalf of a student, to pay for charges for tuition or fees. "Lender" includes:

(a) A bank, mutual savings bank, savings and loan association, or credit union that is subject to examination and supervision in its capacity as a lender by an agency of the United States or of the state in which its principal place of operation is located;

(b) A pension fund that is subject to examination and supervision by an agency of the United States or a state;

(c) An insurance company that is subject to examination and supervision by an agency of the United States or a state;

(d) In any state, a single agency of the state or a single private nonprofit agency designated by the state to lend funds to a student or manage student loan debt;

(e) For purposes of purchasing and holding loans made by other lenders, a student loan marketing association or an agency of any state or the federal government functioning as a secondary market; or

(f) The USED, federal Department of Veterans Affairs, federal Department of Defense, and any other federal agency.

(9) "Loan servicer" means an entity that collects payments, responds to customer service inquiries, and performs other administrative tasks associated with maintaining a student loan on behalf of a lender.

(10) "Non-Title IV adjusted gross tuition and fees" means a school's adjusted gross tuition and fees minus the amount of Title IV federal financial aid received by the school on behalf of its students.

(11) "School" means a for-profit institution of higher education that has received a certificate of approval from the Commission.

(12) "Secretary" means the Maryland Secretary of Higher Education.

(13) "Student" means an individual who resided in Maryland at the time the individual was enrolled in a school.

(14) "Student records" means:

(a) A student's academic record;

(b) A student's account ledger;

(c) Evidence of compliance with the school's admissions requirements;

(d) Credit granted for previous academic work;

(e) Date of admission, start dates, and withdrawal or completion dates;

(f) Reasons for withdrawals, when known;

(g) Student transcripts indicating achievements;

(h) Tuition and financial aid records, when applicable; and

(i) Any other information usually required by institutions of postsecondary education when considering a student for transfer, acceptance of credit, or advanced study.

(15) "Tuition and fees" means all funds paid by or on behalf of a student for charges assessed by a school for providing an instructional program or course.

(a) "Tuition and fees" includes charges assessed for the use of equipment, materials, or supplies that are assessed against all students in the same course or program.

(b) "Tuition and fees" does not include charges for materials, supplies, or books that have been purchased by, and are the property of, the student.

(16) "USED" means the United States Department of Education.

.03 Fund Established.

There is a Maryland Guaranty Student Tuition Fund for For-profit Institutions of Higher Education.

.04 Uses of the Fund.

A. The fund shall be used:

(1) In the event of a school closure, to provide a full refund of tuition and fees incurred by a student that have not been reimbursed or discharged;

(2) Subject to §B of this regulation, to provide a refund, as determined by the Secretary, of tuition and fees incurred by a student that have not been reimbursed or discharged, if the school fails to:

(a) Perform faithfully any enrollment agreement or contract with the student; or

(b) Comply with any provision of the Education Article of the Annotated Code of Maryland; and

(3) For any other reason directly related to the original purpose of the fund deemed appropriate by the Secretary.

B. Prior to making a claim under §A(2) of this regulation, a student shall follow the complaint process of the school. If the school does not respond within 30 days after its receipt of a complaint, the student may file a claim under Regulation .08 of this chapter.

.05 Financial Guarantee or Alternative Fund Payment, and Potential Additional Assessment.

A. Each school shall:

(1) As prescribed by Regulation .06, either provide a financial guarantee to the Commission, or make an alternative fund payment; and

(2) As prescribed by Regulation .07, pay an assessment, if one is levied by the Secretary, into the fund.

B. The Secretary may not issue a certificate of approval to, and may revoke any certificate of approval previously issued to, a school that fails to comply with the requirements of §A of this regulation.

.06 Requirements for the Financial Guarantee or Alternative Fund Payment

A. Subject to §F of this regulation, each school annually shall elect to:

(1) Provide the financial guarantee described in §§ B – D of this regulation; or

(2) Make the alternative fund payment described in § E of this regulation.

B. A financial guarantee:

(1) Shall be in the form and amount the Secretary requires; and

(2) Shall be made under the terms and conditions determined by the Secretary, including the conditions that the institution 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.

C. Amount of Guarantee for Approved Schools.

(1) By October 1, 2017, a school that received its certificate of approval from the Commission prior to July 1, 2016, and that elects to provide a financial guarantee under this regulation, shall provide to the Commission a financial guarantee in an amount equal to either:

(a) 25 percent of the school's adjusted gross tuition and fees for the year July 1, 2015 through June 30, 2016;

or

(b) The school's non-Title IV adjusted gross tuition and fees for the year July 1, 2015 through June 30, 2016.

(2) By October 1, 2018, and each subsequent October 1, a school that received its certificate of approval from the Commission prior to July 1, 2016, and that elects to provide a financial guarantee under this regulation, shall provide to the Commission a financial guarantee in an amount equal to the school's non-Title IV adjusted gross tuition and fees for the prior July 1 through June 30.

(3) The Secretary may require a school to increase the amount of the school's financial guarantee pursuant to the Education Article, §11-203, Annotated Code of Maryland.

D. Amount of Guarantee for New Schools.

(1) A school that receives a certificate of approval from the Commission on or after July 1, 2016, and that elects to provide a financial guarantee under this regulation, shall provide to the Commission a financial guarantee in an amount equal to \$500,000 for the school's first year of operation in the State.

(2) For the school's second year of operation in the State, the school shall provide, by the expiration of its first year of operation in the State, a financial guarantee in an amount equal to the school's non-Title IV adjusted gross tuition and fees for the prior July 1 through June 30.

(3) For the school's third and subsequent years of operation in the State, the school shall provide, by October 1 of each year, a financial guarantee in an amount equal to the school's non-Title IV adjusted gross tuition and fees for the prior July 1 through June 30.

(4) The Secretary may require a school to increase the amount of the school's financial guarantee pursuant to the Education Article, §11-203, Annotated Code of Maryland.

E. Alternative Fund Payment.

(1) If a school elects to make an alternative fund payment in lieu of providing a financial guarantee, the school shall pay into the fund an amount equal to the amount that would have been required for the school's financial guarantee under §§ B – D of this regulation.

(2) The alternative fund payment shall be a one-time payment, except that the Secretary annually may require a school to make an additional payment in the amount of any increase in the school's non-Title IV gross tuition and fees, as reflected in the school's annual Financial Reporting Form under Regulation .11 of this chapter.

F. A school is not required to provide a financial guarantee or to make an alternative fund payment under this regulation if the Secretary suspends those options and determines that the fund shall be funded solely by assessments levied pursuant to Regulation .07 of this chapter.

.07 Fund Accounting, Annual Assessment, and Special Assessment.

A. The Secretary may make an accounting of the fund as appropriate.

B. Notwithstanding any other provision of this chapter, the Secretary may issue an annual assessment to each school. An annual assessment shall be based on a percentage of a school's tuition and fees, for a school year determined by the Secretary, and shall be paid to the Commission by the date determined by the Secretary.

C. If the monies in the fund are insufficient to pay pending claims, the Secretary may issue a special assessment, in addition to any annual assessment, and each school shall pay the special assessment amount as determined by the Secretary.

.08 Filing Claims.

A. A student shall file a claim within 3 years of the date the student knew, or reasonably should have known, of facts that might entitle the student to an award under §A of Regulation .04 of this chapter. Claims filed after that date may not be considered, unless the Secretary determines that there are extenuating circumstances that justify or excuse the late filing. In the event of a school closure, claims shall be filed within 3 years of the date of the school's closure, unless the Secretary determines that there are extenuating circumstances that justify or excuse a late filing.

B. A student making a claim against the fund shall submit a First Report of Claim Form, prepared by the Secretary and published on the Commission's website, which shall require the student to submit, at a minimum, the following information:

(1) The student's:

- (a) Complete name at the time of enrollment and, if different, the student's current name;
- (b) Date of birth;
- (c) Current home address;
- (d) Current mailing address;
- (e) Telephone number(s);
- (f) Current email address;
- (g) Social Security number;
- (h) Program of study;
- (i) Degree, certificate, or other award obtained or sought; and
- (j) Dates of enrollment at the school;

(2) The name and campus location of the school against which the claim is made;

(3) The basis for the claim, specifying if the claim is based on the:

- (a) School's closure;
 - (b) School's failure to perform faithfully an enrollment agreement or contract with the student; or
 - (c) School's failure to comply with a provision of the Education Article of the Annotated Code of Maryland;
- (4) A statement detailing the student's effort to resolve the claim with the school, including any relevant

documentation;

(5) A statement of the remedy requested; and

(6) A signed statement, compliant with State and federal privacy laws, that the student authorizes representatives of the school, lenders, the USED, and loan servicers to release any and all records, including educational and financial records, to the Secretary in the course of the Secretary's investigation of the claim.

C. A student who has submitted a claim shall update the Secretary of any change in name, mailing address, email address, or phone number.

D. Loan Discharge Request.

(1) A student shall request that the USED and, if applicable, its loan servicer, discharge all or part of the student's loan if:

- (a) The student's claim is based on a school's closure; and
- (b) The student is indebted to the USED for monies used to pay tuition and fees to the school.

(2) A student's claim against the fund for tuition and fees that are subject to discharge may not be processed until the student provides the Secretary with evidence from the USED or loan servicer, as applicable, of a final decision on the student's loan discharge request.

(3) The Secretary may require that a student request a loan discharge in other circumstances prior to adjudicating the claim.

E. The Secretary may seek information needed to process a claim directly from a school, lender, loan servicer, or the USED.

F. Notwithstanding any other provision, a student's failure to comply with this regulation or to supply any information requested by the Secretary during an investigation or adjudication of a claim may result in a partial or complete denial of a claim.

G. The Secretary may require that a student submit information in addition to the First Report of Claim Form, including but not limited to:

- (1) Facts and documents that support the claim;
- (2) An explanation of how the school's actions injured or damaged the student;
- (3) The student's complete transcript, reflecting any degrees, certificates, or other awards received;
- (4) The student's financial statement of account with the school, or other documents that indicate charges and payments for tuition and fees;
- (5) A copy of the student's request that the USED or loan servicer discharge all or a portion of the student's loans; and
- (6) The names of all lenders or loan servicer to whom the Student is indebted for tuition assistance, and the account and current contact information for each.

.09 Claim Adjudication.

A. The Secretary may determine the scope of investigation necessary to adjudicate a claim.

B. The Secretary may request information and records from the student, school, lenders, loan servicers, the USED, and others as needed in the Secretary's judgment.

C. The Secretary shall determine whether to approve or deny a claim.

D. If a claim is approved, the Secretary shall determine the:

- (1) Amount to be awarded;*
- (2) Time, place, and manner of payment;*
- (3) Conditions upon which payment shall be made; and*
- (4) Order in which payments shall be made.*

E. In determining whether to grant or deny a claim and the amount to be awarded for an approved claim, the Secretary may consider the:

- (1) Basis of the claim;*
- (2) Evidence obtained in the investigation;*
- (3) Damages or injuries sustained by the student as a result of the school's actions;*
- (4) Student's participation in a transfer program or teach-out;*
- (5) Student's progress toward or receipt of a degree, certificate, or other terminal award;*
- (6) Length of any break in the student's attendance and the reason;*
- (7) School's efforts to resolve the claim;*
- (8) Amount available and likely to become available to the fund for payments of claims;*
- (9) Size and number of claims filed or likely to be filed against the school; and*
- (10) Past decisions on similar claims.*

F. Claim Based on School Closure.

(1) If a claim is based on a school's closure, the student shall be presumed to have incurred no damages or injuries for tuition and fees if the:

- (a) Student was awarded the degree, certificate, or other award that the student sought;*
- (b) Student participates in a teach-out or transfer program as approved by the Secretary;*
- (c) Student's loan is discharged or eligible for discharge; or*
- (d) Claim is for tuition and fees applicable to a semester or term other than the one in which the school closed.*

(2) A student may overcome the presumption in subsection (1) of this section by providing proof of damages or injuries notwithstanding the receipt of an award, successful participation in a teach-out or transfer program, or loan discharge.

G. Notwithstanding any other provision of this chapter, a student may not receive an award for loan amounts that have been or are eligible for discharge.

H. Payment due to School Closure.

(1) If the Secretary awards payment to a student because of a school closure, the payment shall first be made to a lender or loan servicer, as applicable, as repayment of the student's debt to the lender for that portion of the indebtedness that pertains to tuition and fees.

(2) As a condition of payment, the lender or loan servicer shall update the student's credit reports to reflect full or partial satisfaction of the debt, as applicable, and forward confirmation of the update to the Secretary.

(3) Upon the request and written authorization of the student, the Secretary may attempt to have the lender or loan servicer discharge all or a portion of the student's debt.

I. The Secretary's decision on a claim shall be in writing and mailed to the student and school and shall become final 30 days after the date of the Secretary's determination unless the student, within the 30-day period, files with the Secretary a written request for reconsideration. The written request shall contain evidence that supports a request for reconsideration. The Secretary's decision on reconsideration is final.

J. A claimant or other person does not have any right in the fund as beneficiary or otherwise.

.10 Administration of the Fund.

A. The Secretary shall administer the fund as follows:

- (1) Monetary payments into the fund shall be made in the form of a check made payable to the Maryland Guaranty Student Tuition Fund for For-profit Institutions of Higher Education;*
- (2) Monetary payments into the fund shall be maintained by the State Comptroller who shall deposit and invest the assets of the fund. All interest or other return on the fund shall be credited to the fund;*
- (3) A penalty assessed against a school shall be deposited into the fund;*
- (4) The assets of the fund may not be expended for any purpose other than those specified under §A of Regulation .04 of this chapter; and*
- (5) The fund shall be a continuing, nonlapsing fund. Any unspent portion of the fund may not be transferred or revert to the General Fund of the State, but shall remain in the fund to be used for the purposes specified in §A of Regulation .04 of this chapter.*

B. The Commission is subrogated to and may enforce the claim of any student to the extent of any actual or authorized reimbursement from the fund.

C. When a claim is approved, the Secretary, as agent for the fund, shall be subrogated in writing to the amount of the claim. The Secretary is authorized to take all steps necessary to perfect the subrogation rights before the claim is paid. If payment of a school's obligation is made from the fund, the Secretary may seek repayment of the sums from the school or such other persons or entities as may be responsible for the school's obligations. This provision is enforced through the Office of the Attorney General.

D. The Secretary may appoint an advisory council to whom the Secretary may refer matters pertaining to the fund.

.11 Reporting.

A. Each school shall file with the Secretary by September 1 of each year:

- (1) A copy of the school's most recent audited financial statement;
- (2) A copy of the school's most recent pro-forma statement; and
- (3) A Financial Reporting Form, as prescribed by the Secretary, that requires, at a minimum, the following

information for the most recent year beginning July 1 and ending June 30:

- (a) The total number of students enrolled in the school;
- (b) The total amount of adjusted tuition and fees;
- (c) The total amount of non-Title IV adjusted gross tuition and fees; and
- (d) A declaration signed and dated by the chief executive officer of the school under penalty of perjury that the

information in the Financial Reporting Form and any attachments are true and correct.

B. The timely filing of the reports in §A of this regulation is a condition of a school's continued approval to operate.

.12 Notice to Students.

Each school shall include the following statement in its student contract, enrollment agreement, and course catalog: "A student may be entitled to make a claim against the Maryland Guaranty Student Tuition Fund for For-profit Institutions of Higher Education ("Student Tuition Fund") in the case of certain events, including a school closure. The Student Tuition Fund is administered by the Maryland Higher Education Commission. Information about the Student Tuition Fund and instructions for filing a claim may found in Regulations 13B.02.06.01 through .13 of the Code of Maryland Regulations or by contacting the Maryland Higher Education Commission."

.13 Orderly Closure and Teach-Outs.

A. Financial Guarantee.

(1) In addition to the requirements of Regulation .05 of this chapter, a school shall provide to the Commission a financial guarantee in the amount of \$100,000 as security for its performance of duties and responsibilities under this Regulation.

(2) The Secretary may not issue a certificate of approval, and may revoke any certificate of approval previously issued, to a school that fails to provide a financial guarantee as required in this Regulation.

(3) If a school does not comply with the provisions of this regulation, the Secretary may utilize the school's financial guarantee to defray the costs and expenses incurred as a result.

(4) If a school fully and timely complies with the provisions of this regulation, as determined solely by the Secretary, the Secretary shall return the financial guarantee in full.

B. A school that decides to close shall immediately, and in any event within 3 business days of its decision to close, notify the Commission in writing of its intention to close and provide an initial closure plan. The initial closure plan shall include:

- (1) The exact date the school will close and reason for the closure;
- (2) The last date of instruction for each educational service or program;
- (3) Notice of whether branch campuses of the institution will close or remain open;
- (4) If known, notice of whether the school will provide teach-out arrangements; and
- (5) A list of all students who were enrolled at any time during the 120 days prior to the date of the decision to close.

C. A school that decides to close shall, within 10 business days of its decision to close, provide to the Commission a final closure plan that includes:

- (1) A timeline for the transfer of all student records to the Commission;
- (2) A list of all students who were enrolled at any time during the 120 days prior to the date of the decision to close that includes:

- (a) The student's full name at the time of enrollment and any name changes submitted by the student;
- (b) The student's current enrollment status; and
- (c) The student's last known mailing address, email address, and phone numbers;

(3) An explanation of how and when the school will notify all students of their rights and options under federal student financial aid programs and this regulation; and

(4) For any student who will not be provided a complete educational program:

(a) A plan for providing teach-outs or transfers, including details and documentation of any agreements with other institutions; or

(b) If no teach-out is contemplated, or for students who do not wish to participate in a teach-out, a plan for making applicable refunds to students within 45 days from the date of closure.

D. If a school closes, prior to the date of closure it shall deliver to the Secretary electronic copies, if available, of the student records for all current and former students. If electronic copies do not exist, the school shall deliver the originals or paper copies of the records.