

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Maryland Higher Education Commission**
(DLS Control No. 14-112)

Overview and Legal and Fiscal Impact

These regulations amend the definition of “operate in Maryland” as it pertains to requirements for the authorization of out-of-state institutions of higher education to operate in Maryland. Additionally, the regulations also establish reporting requirements for out-of-state institutions of higher education that have a small number of students at sites in Maryland.

The regulations present no legal issues of concern.

Fee revenues for the commission may increase, decrease, or remain stable. If revenues decrease, a fiscal 2015 deficiency appropriation may be needed. Local finances are not affected.

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.02.01.03, and .04-1

Legal Analysis

Background

An institution of postsecondary education must obtain a certificate of approval from the Maryland Higher Education Commission in order to operate in Maryland, unless the institution meets certain qualifications for an exemption. The current definition of to “operate in Maryland” specifically excludes “distance education that originates outside of Maryland.”

Summary of Regulations

The regulations amend the definition of “operate in Maryland” to include distance education that originates outside of Maryland if there is a location in Maryland where students receive the online instruction. Specifically, the definition of “operate in Maryland” applies to out-of-state institutions of higher education that have more than five students in a single program at one or more sites in the State in a supervised internship, practicum, or field experience that is required as part of a degree or certificate program. To address the out-of-state institutions of higher education that have five or fewer students in a single program at one or more sites in the State in a supervised internship, practicum, or field experience, the regulations add a new section that establishes reporting requirements for these institutions.

Legal Issue

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The commission cites §§ 11-105(u), 11-201, and 11-202 of the Education Article as legal authority for the regulations. Specifically, 11-105(u) gives the commission authority to adopt any rule or regulation necessary to carry out its powers and duties and § 11-202 states that an institution must have a certificate of approval from the commission in order to operate in Maryland, unless the institution meets certain exceptions. This authority is correct and complete. The regulations comply with the legislative intent of the law.

Fiscal Analysis

Fee revenues for the commission may increase, decrease, or remain stable. If revenues decrease, a fiscal 2015 deficiency appropriation may be needed. Local finances are not affected.

Agency Estimate of Projected Fiscal Impact

The commission advises that the regulations will likely cause a decrease in application fee revenues for certificates of approval and an increase in registration fee revenues; the net impact on the commission will be revenue-neutral. The Department of Legislative Services disagrees in part as described below.

The Department of Legislative Services advises that, according to current regulations (COMAR 13B.02.01.08), the base fee to apply for a certificate of approval for out-of-state institutions for up to two degree programs is \$7,500 per application. An additional \$850 must be included for each additional program. Approval to operate is renewed annually. During or after the fifth year of operation, and during any subsequent renewal cycle, an out-of-state institution may apply for Extended Operation for up to five years. The Department of Legislative Services further advises that, according to proposed regulations (*i.e.*, DLS Control No. 14-148P – COMAR 13B.05.01.06), the annual registration fee for online distance education programs with no more than 20 Maryland students will be \$500 per program, reduced from an annual registration fee of \$1,000 per program regardless of the number of Maryland students enrolled. For the purposes of this analysis, it is assumed that 14-148P takes effect.

The commission reports that certificate-of-approval revenues will decrease by \$23,500 annually due to six institutions that will no longer be required to receive a certificate of approval for 15 programs with five or fewer Maryland students. The Department of Legislative Services advises that the revenue lost will be partly offset by those institutions paying an annual \$500 registration fee for each of those programs, a total of \$7,500 per year. Thus, fees from those six institutions will decrease by a net of \$16,000 per year.

In addition, according to the commission, approximately 45 out-of-state online institutions with up to five Maryland students enrolled in a program have not registered in Maryland. The commission assumed that most of these institutions will choose to register due to the proposed regulations. Registration fees from these institutions may further offset the reduced

certificate-of-approval fees. If 32 additional institutions register, the regulations will have a neutral overall fiscal impact on the commission. If more (or fewer) than 32 institutions register, then the commission's fee revenues will increase (or decrease) overall. The Department of Legislative Services cannot determine how many additional institutions will register; thus, the overall fiscal impact of the regulations cannot be determined.

Impact on Budget

If fee revenues for the commission decrease, rather than increase or remain stable (revenue neutral), the commission may need a deficiency appropriation for fiscal 2015. A total of \$540,915 in special funds from academic program approval fees and certificate-of-approval and registration fees are appropriated to support the commission's administrative costs in fiscal 2015. The exact budgetary impact cannot be determined, since it is unknown how many institutions not currently registered in the State will decide to become registered due to these regulations. However, it is estimated that the maximum deficiency appropriation needed will be \$16,000.

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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