

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Maryland Higher Education Commission**
(DLS Control No. 18-090)

Overview and Legal and Fiscal Impact

These regulations establish an independent audit requirement for institutions of higher education that participate in the Delegate Howard P. Rawlings Program of Educational Excellence Awards (EEA program). The regulations also require institutions of higher education to remit to the Maryland Higher Education Commission certain EEA program funds that are not awarded and paid in a manner consistent with statutory and regulatory requirements.

The regulations present no legal issues of concern.

There is no fiscal impact on local agencies. Higher education expenditures for public institutions of higher education increase to conduct the required audits. The commission may recover EEA scholarship funds due to the audits.

Regulations of COMAR Affected

Maryland Higher Education Commission:

Financial Aid: Institutional Audit Requirements for Educational Excellence Awards:
COMAR 13B.08.18.01 through .06

Legal Analysis

Background

Under the EEA program, the commission awards grants to qualified low-and moderate-income Maryland residents who are enrolled in undergraduate or associate degree programs at institutions of higher education. The Office of Student Financial Assistance within the commission compiles lists of applicants who apply by the March 1 deadline, ranks the applicants by financial need, and determines award amounts based on the financial need of the applicants. In addition, the commission allocates certain funds to institutions of higher education for awards to students who apply after the March 1 deadline or have other extenuating circumstances. These funds are allocated to the institutions of higher education based on the proportion of State residents enrolled at each institution who receive federal Pell Grants. An institution of higher education that receives funds under this provision must provide the commission with an annual audit describing the disposition of the funds.

Recipients of EEA program awards may use the awards in institutions of higher education in other states, if the office enters into reciprocal scholarship agreements with the other states. According to the commission, however, currently there are no reciprocal scholarship agreements with other states.

Summary of Regulations

These regulations establish an independent audit requirement for institutions of higher education that receive EEA program funds. The audit requirements begin in fiscal year 2019 and require an institution that enrolls students who participate in the EEA program to file an annual audit with the commission. Each audit must be made in accordance with the standards of the American Institute of Certified Public Accountants and generally accepted auditing standards and must determine to what extent the institution has complied with the statutory and regulatory requirements of the EEA program. In determining EEA program compliance, the auditor is required to consider a number of factors, including compliance with the institution's enrollment and credit completion requirements and accuracy of the determination of the awardee's eligibility for the award.

The audit report must include details on noncompliant student records, recommendations to resolve findings, and the total amount of award payments made improperly by the institution of higher education. The auditor must also issue a management letter that lists all material weaknesses in the institution's system of internal controls. The institution must file with the commission, by June 1 each year, a copy of the audit report, management letter, and response to each item in the letter. The commission may require an institution that does not comply with the auditor's recommendations to remit payments of EEA program funds.

The commission must require an institution of higher education to return any overpayments of EEA program funds that were not awarded and paid in a manner consistent with statutory and regulatory requirements. Additionally, the commission may discontinue an institution's eligibility to participate in the EEA program if the institution fails to return funds within the timeframe specified by the commission.

The regulations also include procedures regarding requests for extensions of time to file the required audit reports and management letters and for remitting EEA program funds to the commission.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The commission cites §§ 11–105(u), 18–204(c), and 18–307 of the Education Article as statutory authority for these regulations. Section 11–105(u) authorizes the commission to adopt any rule or regulation necessary for carrying out its powers and duties, which include the administration of the EEA program. Section 18–204(c) authorizes the office to adopt any rule or

regulation necessary to carry out its powers and duties, which also include the administration of the EEA program. Section 18–307 establishes the manner of awarding EEA program funds. Section 18–307(d) requires the commission to allocate certain funds to institutions of higher education for awards to students who apply after the deadline or have other extenuating circumstances, establish guidelines for those awards, and adopt any necessary regulations regarding those awards. This subsection also requires the institutions of higher education receiving the funds to provide the commission with annual audits.

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

Fiscal Analysis

There is no fiscal impact on local agencies. Higher education expenditures for public institutions of higher education increase to conduct the required audits. The commission may recover EEA scholarship funds due to the audits.

Agency Estimate of Projected Fiscal Impact

The commission advises that expenditures for institutions of higher education increase to conduct the required audits. Revenues increase to the extent the commission recovers EEA scholarship funds due to the audits. The Department of Legislative Services concurs, as explained below, and notes that the regulations are silent as to whether the revenues will be deposited to the general fund or the Need-based Student Financial Assistance Fund.

The regulations partly implement a provision of Chapters 429 and 315 of 2002 – known as the College Readiness for Disadvantaged and Capable Students Act of 2002 (Senate Bill 429 and House Bill 661). However, the fiscal and policy notes for Senate Bill 429 and House Bill 661 did not account for higher education expenditures related to the audit or potential recovery of EEA scholarship funds. In addition, the audit required by the regulations is more extensive than the audit required by statute. The exact cost of an outside audit that meets the requirements of the regulations is unknown; however, it is anticipated that higher education expenditures for institutions of higher education increase. Costs may be mitigated to the extent the audit may be undertaken in conjunction with other audits conducted by public institutions of higher education.

Although not an impact on State finances, it should be noted that the regulations require all institutions that enroll students that participate in the EEA scholarship program, rather than just institutions that receive funding from the campus-based program, to conduct an annual audit. Thus, under the regulations, out-of-state institutions that enroll students who receive EEA scholarship funds may be required to conduct the required audit.

The commission may recover EEA scholarship funds due to the audits. The amount of funds recovered due to the audits is unknown.

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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