Maryland General Assembly
Department of Legislative Services

Proposed Regulations
Maryland Higher Education Commission

(DLS Control No. 18-126)

Overview and Legal and Fiscal Impact

The regulations alter the financial guarantee requirements of private career schools that operate in the State by specifying that the requisite performance bond or irrevocable letter of credit must be between the Maryland Higher Education Commission and the surety and in an amount that covers at least 100% of a school's non–Title IV total tuition liability.

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.01.01.19

Legal Analysis

Background

Following a 2010 Government Accountability Office report regarding the potential for fraudulent or deceptive marketing and tuition policies at for–profit institutions of higher education, the General Assembly has taken several actions in order to protect the students of Maryland from these practices. The regulation of private career schools in the State, typically for–profit institutions of postsecondary education, predates the passage of many of these legislative initiatives. However, Chapters 835 and 836 of 2018, among other things, refined the financial guarantee requirements for private career schools. These regulations implement the private career school–related provisions of Chapters 835 and 836.

Summary of Regulations

In addition to updating defined terms and making stylistic and clarifying changes, the regulations alter the financial guarantee requirements of private career schools that operate in the State. For both a Title IV and a non–Title IV school, the performance bond or irrevocable letter of credit must be between the commission and the surety and made payable to the Secretary of Higher Education, on behalf of the commission. For a non–Title IV school, the amount of the financial guarantee must cover 100% of the total tuition liability of the school. For a Title IV school, the amount of the financial guarantee must cover at least 100% of the total non–Title IV tuition liability of the school, unless a greater amount is required by the Secretary and except as otherwise specified. During a Title IV school's first through fifth years of operation, the school must provide a financial guarantee in an amount that covers 100% of the total tuition liability of the school. During a Title IV school's sixth through tenth years of operation, the school must provide a financial guarantee in an amount that covers 50% of the total tuition liability of the school if the school does not meet specified financial viability requirements and 50% of the total tuition liability is greater than 100% of the school's total non–Title IV tuition liability. If the Title IV school meets the financial viability requirements, then the school must provide a financial guarantee that covers 100% of the school's total non–Title IV tuition liability. After a Title IV school's tenth year of operation, the amount of the financial guarantee described above reduces to 30% of the total tuition liability of the school with the same criteria and assumptions.

The regulations also provide for a process by which a Title IV school may request that the Secretary reduce the amounts described above with the caveat that a financial guarantee may not be reduced below an amount equal to 100% of the school's total non–Title IV tuition liability. Finally, language that previously allowed for the elimination of a financial guarantee under specified circumstances is being repealed by the regulations.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The commission cites §§ 11–105(u), 11–201, and 11–203 (as enacted by Chapters 835 and 836) of the Education Article as statutory authority for the regulations. Section 11–105(u) authorizes the commission to adopt regulations to carry out its powers and duties. Section 11–201 requires the commission to establish minimum requirements for issuing certificates, diplomas, and degrees by institutions of postsecondary education. Section 11–203 requires each private career school, for–profit institution of higher education that operates in the State, and for–profit institution of higher education that is required to register with the commission, to furnish a performance bond or irrevocable letter of credit in an amount equal to the school or institution's non–Title IV adjusted gross tuition and fees for the prior July 1 through June 30. Section 11–203 also requires the bond or letter of credit to be between the surety and the commission.

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

Technical Corrections and Special Notes

The commission has indicated that it will submit replacement pages to the Division of State Documents to fix typographical errors, update defined terms, and clarify that a bond or letter of credit is made payable to the Secretary "on behalf of the Commission".

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations implement provisions of Chapters 835 and 836 of 2018 (House Bill 1103 and Senate Bill 795, respectively), which require a private career school and for-profit institution (including those required to register) to furnish to the commission a performance bond or irrevocable letter of credit in an amount equal to the school's or institution's non-Title IV adjusted gross tuition and fees for the prior July 1 through June 30. The commission advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs and advises that the fiscal and policy notes for Senate Bill 795 and House Bill 1103 estimated that the bills would have no material impact as they in large part codify existing practice.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

Many private career schools are small businesses. The commission advises that the regulations have no economic impact on small businesses in the State beyond that due to the statute which they implement. The fiscal and policy notes for Senate Bill 795 and House Bill 1103 noted that, under the legislation, some private career schools will need to furnish a larger financial guarantee; however, some will be allowed to furnish a smaller financial guarantee. The Department of Legislative Services generally concurs with the commission but advises that the proposed regulations (and existing regulations) allow the required financial guarantee to be set at an amount above that required by Senate Bill 795 and House Bill 1103 (*i.e.*, the school's non-Title IV adjusted gross tuition) if deemed necessary by the Secretary of Higher Education. Thus, fewer schools than anticipated in the fiscal and policy notes for the legislation may realize a lower financial guarantee. This conforms with current practice, statute, and regulations.

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