

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Maryland Higher Education Commission**  
(DLS Control No. 18-127)

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## **Overview and Legal and Fiscal Impact**

The regulations alter the financial guarantee requirements of institutions of postsecondary education that are required to register with the Maryland Higher Education Commission before offering fully online distance education programs to Maryland students. In particular, the regulations make a distinction between a “pre-registration” financial guarantee and, in the case of a for-profit institution of higher education, a “continuous” financial guarantee.

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:**

Fully Online Programs: Registration: COMAR 13B.05.01.06

Registration: COMAR 13B.05.01.07

Registration: COMAR 13B.05.01.11

Registration: COMAR 13B.05.01.12

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## **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 took action in order to protect the students of Maryland from these practices. Chapter 277 of 2011, was enacted to draw a clear distinction in State law between public, private nonprofit, and for-profit institutions of higher education that operate in Maryland. This law also authorized the commission to create a guaranty fund to provide relief to students if a for-profit institution were to close or fail to meet its contractual agreements, as well as required other forms of financial guarantee from these institutions. The following year, Chapters 595 and 596 of 2012 established a system of registration for institutions of postsecondary education that enroll Maryland students in fully online distance education programs. The concern of the General Assembly was that many of these online institutions are for-profit institutions of higher

education that may engage in the aforementioned fraudulent or deceptive marketing and tuition policies.

Since the passage of Chapters 595 and 596, various reports and legislative initiatives have attempted to answer the question: What is the best method by which to ensure that a student will be made financially whole if that student is defrauded by a for-profit institution of higher education? Chapters 835 and 836 of 2018, the most recent iteration of this attempt, apply specified financial guarantee requirements to for-profit institutions of higher education that are required to register with the commission under Chapters 595 and 596, as well as to private career schools and for-profit institutions of higher education that operate in the State.

## **Summary of Regulations**

In addition to making several clarifying changes, the regulations alter the financial guarantee requirements of institutions of postsecondary education that are required to register with the commission before offering fully online distance education programs to Maryland students. In particular, the regulations make a distinction between a “pre-registration” financial guarantee and, in the case of a for-profit institution of higher education that is required to register, a “continuous” financial guarantee. The pre-registration financial guarantee must be between the commission and the surety, and must be in an amount sufficient to cover 100% refunds of fees paid to the institution by all Maryland students. The continuous financial guarantee also must be between the commission and the surety. On initial application, the continuous financial guarantee must be in the form of an irrevocable letter of credit or a performance bond, in an amount equal to the institution’s non-Title IV adjusted gross tuition and fees for the students of its principal campus for the prior July 1 through June 30, unless the Secretary of Higher Education requires a higher amount. On registration renewal, the continuous financial guarantee must be in an amount equal to the institution’s non-Title IV adjusted gross tuition and fees for its Maryland students, unless the Secretary of Higher Education requires a higher amount.

Further, the regulations require for-profit institutions of higher education to submit specified information with the initial registration application and a report with the annual registration renewal application certifying (1) the total number of Maryland students enrolled in the institution; (2) the total amount of adjusted tuition and fees from the enrollment of Maryland students; and (3) the total amount of non-Title IV adjusted gross tuition and fees from the enrollment of Maryland students. This report must include a declaration signed by the chief executive officer of the institution, under penalty of perjury, that the information in the report and any attachments to the report are true and correct.

The regulations also require institutions that are required to register to provide notice to the commission of any adverse action, or potentially adverse action, against the institution by the U.S. Department of Education.

## **Legal Issues**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The commission cites §§ 11-105(u), 11-201, 11-202, 11-202.2, 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 11-202 specifies the requirements for obtaining a certificate of approval in order to operate in the State. Section 11-202.2 requires specified institutions that enroll Maryland students in a fully online distance education program to register with the commission. 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 submitted replacement pages to the Division of State Documents in order to correct typographical and grammatical errors.

## **Fiscal Analysis**

There is no fiscal impact on State or local agencies.

## **Agency Estimate of Projected Fiscal Impact**

The regulations, in part, implement provisions of Chapters 835 and 836 of 2018 (House Bill 1103 and Senate Bill 795, respectively), which require an out-of-state institution that enrolls a Maryland student in online education to furnish a performance bond immediately and alter the amount of the performance bonds required as a "pre-registration" financial guarantee. 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**

The commission advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

### **Contact Information**

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