

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulations  
Maryland Higher Education Commission**  
(DLS Control No. 18-177)

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

The regulations alter the financial guarantee requirements of for-profit institutions of higher education that operate in the State such that these institutions must provide a specified financial guarantee made payable to the Secretary of Higher Education, on behalf of the Maryland Higher Education Commission, that is no less than an amount equal to the institution's non-Title IV adjusted gross tuition and fees for the prior July 1 through June 30.

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:**

Academic Regulations: Financial Guarantees and the Maryland Guaranty Student Tuition Fund for For-profit Institutions of Higher Education: COMAR 13B.02.06.05 and .06

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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, among other things, 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.

Since the passage of Chapter 277, 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.

## **Summary of Regulations**

The regulations alter the financial guarantee requirements of for-profit institutions of higher education that operate in the State. Rather than authorizing these institutions to either provide a financial guarantee or pay a fee into the Maryland Guaranty Student Tuition Fund for For-Profit Institutions of Higher Education, the regulations require these institutions to provide a financial guarantee, which is defined in COMAR 13B.02.06.02B.(5) as “a performance bond, or irrevocable letter of credit, in the form and amount the Secretary requires.” The regulations require this financial guarantee to be made payable to the Secretary on behalf of the commission and to be no less than an amount equal to the institution’s non-Title IV adjusted gross tuition and fees for the prior July 1 through June 30. Further, the financial guarantee must be executed between the commission and the surety.

## **Legal Issues**

The regulations present no legal issues of concern.

## **Statutory Authority and Legislative Intent**

The commission cites §§ 11–105(u) 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 11–203 requires each for-profit institution of higher education that operates in the State to furnish a performance bond or irrevocable letter of credit in an amount equal to the 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.

## **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) that alter the financial guarantee requirements of for-profit institutions of higher education operating in the State. Specifically, among other provisions, Chapters 835 and 836 repealed the requirement that the Maryland Higher Education Commission create a guarantee fund for for-profit institutions that operate in the State and, instead, required these institutions to provide a performance bond or irrevocable letter of credit made payable to the Secretary on behalf of the commission, that is no less than an amount equal to the institution’s non-Title IV adjusted gross tuition and fees for the prior July 1 through June 30. The fiscal and policy notes for

House Bill 1103 and Senate Bill 795 noted that the bills had no material fiscal impact as they in a large part codified existing practice.

The commission advises that the regulations have no fiscal impact. The Department of Legislative Services concurs as any impact, which was assumed to be not material, was already accounted for in the fiscal and policy notes for the legislation.

### **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. As for-profit institutions of higher education are not considered small businesses, the Department of Legislative Services concurs.

### **Contact Information**

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