

**Maryland General Assembly
Department of Legislative Services**

**Emergency/Proposed Regulations
Maryland Higher Education Commission**
(DLS Control No. 21-109)

Overview and Legal and Fiscal Impact

The regulations alter the method for calculating the financial guarantee requirement for a private career school by removing the distinction between a fully in-person program and a hybrid or fully online program as a factor.

The regulations present no legal issues of concern.

There is no impact on local agencies and no material fiscal impact on State agencies.

Regulations of COMAR Affected

Maryland Higher Education Commission:

Nonpublic Schools: Minimum Requirements for Private Career Schools:
COMAR 13B.01.01.19 and .26

Legal Analysis

Background

Under Education Article § 11-203 the Maryland Higher Education Commission (MHEC) requires each private career school that operates in the State to furnish a performance bond or irrevocable letter of credit in an amount equal to the school's non–Title IV adjusted gross tuition and fees for the prior July 1 through June 30. MHEC regulations also require each private career school that operates in the State to furnish an increased performance bond or irrevocable letter of credit, with the amount depending on whether the school: (1) is a Title IV school, (2) is financially viable, and (3) offers on–site programs, or hybrid/online programs. Current regulations also authorize the Secretary of Higher Education to increase a school's financial guarantee requirement if the Secretary deems the increase necessary. For schools offering hybrid or online programs, regulations currently require each private career school operating in the State to furnish a performance bond or irrevocable letter of credit in an amount equal to the amounts required by the

school to provide for its fully in-person programs plus an amount sufficient to cover 100% of the sum of the tuition of each hybrid and fully online program.

Summary of Regulations

The regulations remove the distinction between fully in-person programs and hybrid or fully online programs as a factor in calculating the financial guarantee amount for a private career school. These regulations would require MHEC to calculate a financial guarantee based on: (1) whether a school is a Title IV School, (2) whether a school is financially viable, and (3) the number of years in which a school has been operating.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

MHEC cites Title 11, Subtitles 1, 2, and 4 of the Education Article as well as State Government Article, Title 10, Subtitle 2 as statutory authority for these regulations. More specifically, § 11-105 of the Education Article sets forth the powers and duties of MHEC, including authorizing MHEC to adopt any rule or regulation necessary to carry out its powers and duties. Section 11-203 of the Education Article authorizes MHEC to require any institution of postsecondary education that is required to obtain a certificate of approval and certain institutions of higher education to furnish a performance bond or other form of financial guarantee for the certificate of approval conditioned that the institution: (1) will perform faithfully all agreements or contracts it makes with its students, and (2) comply with the provisions of the Education Article. Section 11-203 also requires MHEC to require each private career school and certain for-profit institutions of higher education to furnish 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 remaining cited authority is not relevant to these regulations.

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

Emergency Status

MHEC requests emergency status beginning September 15, 2021 and expiring January 15, 2022. This emergency period is within the normal time frames approved by the Joint Committee on Administrative, Executive, and Legislative Review. MHEC indicates that as the State enters the post-pandemic era, private career schools that want to continue to offer online programs will need to apply for approval to do so, resulting in a financial guarantee that would make offering online education cost-prohibitive. The emergency status is necessary to allow private career schools to continue to offer hybrid and online education without interruption while

the normal regulatory process is pending. MHEC has proposed identical non-emergency regulations that will be published in a future issue of the Maryland Register.

Fiscal Analysis

There is no impact on local agencies and no material fiscal impact on State agencies.

Agency Estimate of Projected Fiscal Impact

Under Education Article, § 11-203, Annotated Code of Maryland, private career schools are required to maintain a financial guarantee to ensure that tuition refunds can be made to students in the event of a school closure. The statute requires that the guarantee be at least 100% of non-Title IV tuition liability and gives the commission the discretion to increase that amount. By regulation, the commission requires an increased financial guarantee depending on the type of institution, how long the institution has been operating, if the institution is financially viable, and the modality of the program being offered. Under the regulations, the financial guarantee for online and hybrid programs operated by private career schools is changed (*i.e.*, reduced) to be the same as it would be for similar fully in-person programs.

Under the regulations, according to the commission, in no instance would a financial guarantee amount drop below the statutory minimum of 100% of non-Title IV tuition. Thus, under the regulations, 100% of cash payments made by a student and 100% of payments made by private lenders will be covered by the financial guarantee. For schools that can accept federal student loans to pay tuition, the federal government typically discharges federal loans in the event of a precipitous closure. Therefore, covering non-Title IV tuition is usually sufficient to provide refunds to students for both their cash payments and to satisfy any private loans. By regulation, the commission does provide for higher financial guarantees for schools that are not considered financially viable, which often indicates a higher likelihood of closure. The increased amount may cover other closure costs such as transferring student transcripts to the commission or facilitating teach-out agreements.

In the unlikely event that a financial guarantee did not cover the necessary amounts, the commission would draw on the guaranteed student tuition fund (GSTF) for private career schools. The GSTF balance currently stands at approximately \$800,000 and is funded by an annual assessment paid by each private career school. If the balance reaches \$2.0 million at the end of a fiscal year, the annual assessment will cease, presumably until the fund balance goes below \$2.0 million again. If the GSTF balance is depleted, the Secretary may require a special assessment from private career schools under current regulations.

Therefore, the commission advises that the regulations have no impact on State agencies. Any potential impact will be on the GSTF, which is funded by the private career schools. The Department of Legislative Services generally concurs and advises that the regulations have no material impact on State agencies due to the unlikely potential impact on the GSTF special fund.

Impact on Budget

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

Agency Estimate of Projected Small Business Impact

The majority of Maryland's approximately 150 private career schools are small businesses. The commission advises that the regulations will reduce the cost for private career schools to offer online education by reducing the amount of the financial guarantee that must be furnished by private career schools using the online modality. According to the commission, under current regulations, a financial guarantee for an online or hybrid program may be as much as 10 times higher than the financial guarantee for the same program offered in a traditional format. Due to the COVID-19 pandemic, the online and hybrid programs are more common and are not considered more likely to close unexpectedly than a traditional program. The commission advises that reducing the cost of offering hybrid and online programs may encourage schools to offer these programs, which may increase enrollment in these programs.

The Department of Legislative Services generally concurs with the commission that, under the regulations, private career schools with hybrid and online programs will need to secure a smaller financial guarantee. In addition, the Department of Legislative Services advises that, as explained above, in the unlikely event that a financial guarantee does not cover the necessary amounts, the commission will draw on the GSTF for private career schools, which is funded by an annual assessment on operational private career schools. However, any direct impact on private career schools is likely minimal.

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