

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Maryland Higher Education Commission**
(DLS Control No. 23-029)

Overview and Legal and Fiscal Impact

These regulations create a process for the Maryland Higher Education Commission to monitor for-profit private career schools and for-profit institutions of higher education and enforce compliance with the Veterans' Education Protection Act of 2020, which requires applicable institutions to submit specific information regarding revenues to the Commission on an annual basis.

The regulations present no legal issues of concern.

There is no material 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.01.01.17

Academic Regulations: Financial Guarantees and the Maryland Guaranty Student Tuition Fund for For-profit Institutions of Higher Education: COMAR 13B.02.06.01

Financial Guarantees and the Maryland Guaranty Student Tuition Fund for For-profit Institutions of Higher Education: COMAR 13B.02.06.06

Financial Guarantees and the Maryland Guaranty Student Tuition Fund for For-profit Institutions of Higher Education: COMAR 13B.02.06.11

Financial Guarantees and the Maryland Guaranty Student Tuition Fund for For-profit Institutions of Higher Education: COMAR 13B.02.06.14

Legal Analysis

Background

Under § 11–210 of the Education Article a for-profit institution of higher education, a private career school approved to operate in the State, and a for-profit institution of higher education that enrolls Maryland residents in a fully online distance education program in the State must be approved by the commission to receive education assistance under the federal Post–9/11 Veterans Educational Assistance Act of 2008 and have received funds through Title IV of the

federal Higher Education Act of 1965 during the prior academic year. Section 11–210(f) of the Education Article requires the commission to adopt regulations to implement the law.

The federal 90/10 rule requires for–profit colleges to derive at least 10% of their annual revenue from non–federal funds. Until a recent change enacted by Congress in 2021, benefits from the U.S. Department of Defense Tuition Assistance program and the U.S. Department of Veterans Affairs GI Bill were not considered federal funds under the 90/10 rule. Accordingly, the U.S. Department applied these benefits toward the 10% requirement. Under the American Rescue Plan, enacted by Congress, March 11, 2021, and subsequent regulations adopted by the U.S. Department of Education, October 28, 2022, military and veterans benefits will be classified as federal education funding applied to the 90% portion of the calculation. The new rule takes effect July 1, 2023. The Department of Education will publish a list of federal funds in the first fiscal year that begins on or after January 1, 2023.

Summary of Regulations

The regulations prohibit, beginning in fiscal 2023, for–profit institutions of higher education and for–profit private career schools from enrolling new Maryland residents in a program if they fail to have at least 10% of their annual revenue from a source other than federal funds, including military or veterans assistance, in either two out of three immediately preceding fiscal years or two consecutive years. The commission will annually review an institution's three most recent revenue percentages that institutions are required to annually report. Institutions in violation of the regulation may not enroll new Maryland residents and may be fined up to \$5,000 by the commission.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The commission cites § 11–210 of the Education Article as statutory authority for the regulation. More specifically, section 11–210(e) prohibits for–profit institutions of higher education and private career schools from enrolling new Maryland residents in a program if they fail to derive at least 10% of their annual revenue from sources other than federal funds in either two out of three immediately preceding fiscal years or two consecutive years. Military and veterans benefits are included under federal funds, excluding monthly housing stipends under the Post–9/11 Veterans Educational Assistance Act of 2008. Section 11–210(f) requires the commission to adopt regulations to enforce the statute.

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

Fiscal Analysis

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

Agency Estimate of Projected Fiscal Impact

The regulations implement the Veterans' Education Protection Act, Chapter 546 of 2020 (Senate Bill 294), which prohibits, beginning in fiscal 2023, specified for-profit institutions of higher education and private career schools from enrolling new Maryland residents in a program if they fail to have at least 10% of their annual revenue, as specified, from a source other than federal funds, including education aid (civilian or military). The 10% threshold in the legislation applies to either: (1) two out of three of the immediately preceding fiscal years or (2) two consecutive years. The regulations create a process for the commission to monitor and enforce institutions' compliance with the legislation. Covered institutions and schools are required to submit specified information regarding their revenues to the commission on an annual basis. The fiscal and policy note for Senate Bill 294 of 2020 assumes that the commission can review the additional financial information using existing resources; however, to the extent enforcement is required for institutions that violate the requirements, additional staff resources may be required. The commission advises that the regulations have no impact on State or local governments beyond that already accounted for in the fiscal and policy note.

The Department of Legislative Services generally concurs with the commission's assessment but notes that, in addition to the fiscal impact accounted for in the fiscal and policy note, revenues may increase up to \$5,000 per violation due to the optional fine provision established in the regulations. However, this fine is assumed to have no material impact on State finances as it is assumed that the fine will be rarely imposed.

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 minimal or no economic impact on small businesses in the State beyond the impact of the underlying legislation (Veterans' Education Protection Act, Chapter 546 of 2020). The fiscal and policy note for Senate Bill 294 of 2020 noted that, to the extent that a private career school is unable to enroll new Maryland residents due to the requirements in the Veterans' Education Protection Act, a private career school may need to seek new sources of approved revenue or potentially close. The commission notes that the information the regulations require private career schools to report must already be calculated and submitted to the U.S. Department of Education; thus, private career school reporting costs are not materially impacted. The Department of Legislative Services generally concurs but notes that, under the regulations, covered institutions and schools found to be in violation of the underlying legislation may be fined up to \$5,000. It is assumed that the prohibition against enrolling new Maryland students is a larger

deterrent than the potential fine and that the fine will be rarely imposed; thus, any small business impact is assumed to be minimal.

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