

# **MARYLAND HIGHER EDUCATION COMMISSION**

## **MEETING BOOKLET**

Time: 1:00 PM  
January 22, 2020

Place: Conference Call  
+1 (980)313-3552  
Pin: 426 312 326#

# **Maryland Higher Education Commission**

Anwer J. Hasan, Chairman

Sandra L. Jimenez, Vice-Chair

Senchal D. Barrolle, Esq.

Vivian S. Boyd, Ph.D.

James E. Coleman

Vera R. Jackson, Ph.D.

Ian D. MacFarlane

Donna M. Mitchell

Jordan T. Troutman, Student Commissioner

John W. Yaeger, Ed.D.

**James D. Fielder, Jr., Ph.D.**  
**Secretary**

**Lawrence J. Hogan, Jr.**  
**Governor**

**Boyd K. Rutherford**  
**Lt. Governor**



**MHEC**  
Creating a state of achievement

**Larry Hogan**  
Governor

**Boyd K. Rutherford**  
Lt. Governor

**Anwer Hasan**  
Chairperson

**James D. Fielder, Jr., Ph. D.**  
Secretary

## **Maryland Higher Education Commission Meeting Agenda**

**TIME:** 1:00 p.m.  
Wednesday  
January 22, 2020

**PLACE:** Conference Call  
+1 980-313-3552  
PIN: 426 312 326 #

	<b>Page</b>	<b>Action Item</b>
<b>Call to Order</b>		
<b>Commission Minutes Approval</b> .....	1	*
• December 4, 2019		
<b>Chairman's and Secretary's Remarks</b>		
<b>Commissioner Committee Updates</b>		
<b>Department of Finance and Administration – Mr. Geoffrey Newman</b>		
Final Approval of New COMAR Program Regulations – Workforce Readiness Grant.....	7	*
<b>Department of Academic Affairs – Dr. Emily Dow</b>		
Approval to Publish Proposed COMAR Regulations – Changes to Associate of Arts in Teaching (A.A.T.).....	9	*
Final Approval of New COMAR Regulations – Private Inurement by Nonprofit Institutions of Higher Education.....	13	*
<b>Adjournment</b>		



**Maryland Higher Education Commission**  
Meeting Minutes

December 4, 2019  
9:30 a.m.

The Maryland Higher Education Commission (MHEC) met on Wednesday, December 4, 2019 at 6 North Liberty Street, 7<sup>th</sup> Floor Board Room, Baltimore, MD 21201.

**Commission members present:**

Anwer J. Hasan, Chairman	Ian D. MacFarlane
Dr. Vivian S. Boyd	Donna M. Mitchell
James E. Coleman	Jordan T. Troutman
Dr. Vera R. Jackson (phone)	Dr. John W. Yaeger

**Commission members not present:**

Sandra L. Jimenez, Vice-Chair	Rizwan A. Siddiqi
Senchal D. Barrolle, Esq.	

**Staff members present:**

Dr. James D. Fielder, Jr.	Dr. Emily Dow
Geoffrey Newman	Soma Kedia
Jennifer Katz	Donna Thomas
Sarahita Wyatt-Paige	Lakeisha Thornton
Dr. Barbara Schmertz	Lee Towers
Trish Gordon-McCown	

**Call to Order**

The meeting was called to order by **Chairman Hasan** at approximately 9:33 a.m. A meeting quorum was established with eight of the eleven members present.

**Approval of Minutes – Action Items**

There was a motion by **Commissioner MacFarlane** and a second by **Commissioner Coleman** for approval of the October 23, 2019 meeting minutes. The motion was approved unanimously.

**Chairman’s Remarks**

**Chairman Hasan** did not make any special remarks.

**Secretary’s Remarks**

**Chairman Hasan** recognized **Secretary Fielder** who mentioned that Maryland Higher Education Commission (MHEC) will begin to live-stream their meetings in January of 2020.

**Secretary Fielder** recognized Mr. Geoffrey Newman, Assistant Secretary of Higher Education, who welcomed and introduced Ms. Lakeisha Thornton, Procurement Officer in the Office of Budget and Finance.

### **Commissioner Committee Updates**

**Finance and Operations Committee: Commissioner MacFarlane** reported that there are currently 9 vacancies in the agency, though 2 are about to be filled. MHEC is actively recruiting for the other 7 open positions. Also, an audit of the agency will be taking place in the near future.

**Program Review Committee: Commissioner Yaeger** reported that they are currently looking at terminology and the program review process as a way to clarify things and improve transparency. There will also be a workgroup formed in the near future to study substantial modifications.

**Outreach, Grants, and Financial Assistance Committee: Commissioner Jackson** is the new head of this committee. They will be scheduling a meeting soon to discuss future objectives.

### **Office of Student Financial Assistance – Financial Assistance Advisory Council (FAAC) Report to the Commission on the Implementation of House Bill 824 – Information Item**

**Chairman Hasan** recognized Ms. Donna Thomas, Director of the Office of Student Financial Assistance (OSFA), who introduced the Chair of FAAC, Mr. Tom McDermott (on the phone), Assistant Vice Provost of Financial Aid at Johns Hopkins University, and Vice-Chair Ms. Patricia Scott, Assistant Vice President of Enrollment Administration – University Registrar at the University of Maryland, Baltimore. (This agenda item was advanced due to the time constraints of Mr. McDermott.)

Mr. McDermott stated that the Council had two goals this year: to study the verification process and the implementation of House Bill 824 Financial Aid – Guaranteed Access Grants – Verification and Administration by Institutions of Higher Education. As a result of their work, FAAC came up with a list of 6 recommendations. He highlighted two, in particular. First, they have recommended that OSFA adhere to the federal verification standards for the Guaranteed Access Grant programs. Secondly, they advise that the requirement of a college preparatory program for the Guaranteed Access Grant be eliminated. The requirement is burdensome and unnecessary. He also pointed out that implementation of these recommendations might lead to an increased number of qualified applicants and, therefore, a need for more funding. Ms. Scott added that there was consensus regarding these recommendations among all FAAC members.

**Commissioner MacFarlane** asked if legislation would be required to implement these recommendations. Ms. Thomas answered that legislation is required, and if no action is taken during the upcoming legislative session, the bill would go into effect on July 1, 2020.

**Department of Finance and Administration – FY 2021 Higher Education State Operating Budget Recommendations – Action Item**

**Chairman Hasan** recognized Mr. Newman who reported that the Maryland Higher Education Commission is charged with submitting to the Governor and the General Assembly a consolidated operating budget for higher education. He presented the break-down of the \$2.2 billion in state funds for higher education in fiscal year 2020, funding guidelines, and Maryland's national ranking in terms of resident undergraduate tuition and fees at public four-year colleges and universities.

Mr. Newman recommended that the Commission adopt the following funding priorities for higher education for fiscal year 2021:

- Funding to support Maryland Higher Education Commission's general administration budget as it continues to implement new programs and examine its operations to increase automation of application and management programs.
- Continued funding to support moderate increases in resident undergraduate tuition rates at public colleges and universities.
- Funding to support new programs of student financial assistance brought forward by the Governor and General Assembly.
- Continued support to formula-funded institutions and segments in accordance with the calculation methodologies provided in statute.

**Commissioner MacFarlane** made a motion for approval and **Commissioner Boyd** seconded the motion. The motion was approved unanimously.

**Department of Finance and Administration – FY 2021 Higher Education State Capital Budget Recommendations – Action Item**

**Chairman Hasan** recognized Mr. Newman who reported that the Maryland Higher Education Commission is charged with submitting to the Governor and the General Assembly a consolidated capital budget for higher education. He presented the break-down of projects for each of the segments.

Mr. Newman recommended that the Commission recommend capital funding for fiscal year 2021 as follows:

- Fund the Community College Construction Grant to the full level provided in the State Capital Improvement Program (CIP).
- Provide funding to the MICUA institutions according to the State CIP.
- Provide funding to the public four-year colleges and universities in the levels to continue the construction and equipment phases and for those projects beginning the design phase that can be accommodated in this year's capital budget.

**Commissioner Boyd** made a motion for approval and **Commissioner MacFarlane** seconded the motion. The motion was approved unanimously.

**Office of Student Financial Assistance – Financial Assistance Advisory Council (FAAC)  
Proposed Bylaws – Action Item**

**Chairman Hasan** recognized Ms. Thomas who presented the bylaw changes to the Financial Assistance Advisory Council. They include: 1) adding a council member of Maryland Non-Profit College Access; 2) the total number of members has increased from 18 to 19, with the additional council member; and 3) the beginning month for each term was changed from May to July.

Ms. Thomas recommended that the Commission adopt the proposed bylaws to govern the operation of the FAAC. **Commissioner Mitchell** made a motion for approval and **Commissioner Coleman** seconded the motion. The motion was approved unanimously.

**Office of Student Financial Assistance – Proposed Approval of Amendments to COMAR  
Program Regulations – Richard W. Collins III Leadership with Honor Scholarship  
Program – Action Item**

**Chairman Hasan** recognized Ms. Thomas who reported that the Commission previously approved the final adoption of the Richard W. Collins III Leadership with Honor Scholarship for final adoption on October 23, 2019. However, clarifying amendments have since been made to the regulations, defining full-time enrollment as 9 credits per semester in a graduate-level program.

Ms. Thomas recommended that the Commission approve for publication in the Maryland Register the proposed amendments to the regulations for the Richard W. Collins III Leadership with Honor Scholarship, and authorize MHEC's attorneys to approve non-substantive revisions as necessary to conform the proposed regulations to the stylistic and formatting requirements of AELR and of the Division of State Documents. **Commissioner Yaeger** made a motion for approval and **Commissioner MacFarlane** seconded the motion. The motion was approved unanimously.

**Office of Student Financial Assistance – Proposed Approval of Amendments to COMAR  
Program Regulations – Charles W. Riley Firefighter and Ambulance and Rescue Squad  
Member Scholarship – Action Item**

**Chairman Hasan** recognized Ms. Thomas who explained that the Maryland General Assembly enacted legislation in 2019 which altered the application requirements for the program. The March 1<sup>st</sup> Free Application for Federal Student Aid (FAFSA) filing was removed.

Ms. Thomas recommended that the Commission approve for publication in the Maryland Register the proposed amendments to the regulations for the Charles W. Riley Firefighter and Ambulance and Rescue Squad Member Scholarship, and authorize MHEC's attorneys to approve non-substantive revisions as necessary to conform the proposed regulations to the stylistic and



formatting requirements of AELR and of the Division of State Documents. **Commissioner Mitchell** made a motion for approval and **Commissioner Boyd** seconded the motion. The motion was approved unanimously.

**Office of Student Financial Assistance – Proposed Approval of Amendments to COMAR Program Regulations – Delegate Howard P. Rawlings Educational Excellence Awards Program – Action Item**

**Chairman Hasan** recognized Ms. Thomas who reported that the Delegate Howard P. Rawlings Educational Excellence Awards Program regulations have been amended to define the statutory requirement of a college preparatory program. This requirement is specific to high school applicants for consideration of the Guaranteed Access Grant Award Program and was not previously defined in regulations.

Ms. Thomas recommended that the Commission approve for publication in the Maryland Register the proposed emergency amendments to the regulations for the Delegate Howard P. Rawlings Educational Excellence Awards, and authorize MHEC's attorneys to approve non-substantive revisions as necessary to conform the proposed regulations to the stylistic and formatting requirements of AELR and of the Division of State Documents. **Commissioner MacFarlane** made a motion for approval and **Commissioner Yaeger** seconded the motion. The motion was approved unanimously.

**Office of Student Financial Assistance – Proposed Approval to Publish COMAR Program Regulations – Near Completer Grant Program – Action Item**

**Chairman Hasan** recognized Ms. Thomas who reported that the Maryland General Assembly enacted legislation in 2018 to create the Near Completer Grant Program. The purpose of the grant program is to provide grants to individual students who are near completers as an incentive to obtain an associate's or bachelor's degree. An eligible applicant refers to an individual who has attended a two-year or four-year educational institution and has completed college credits but does not have a college degree and is no longer attending an institution of higher education.

Ms. Thomas recommended that the Commission approve for publication in the Maryland Register the proposed amendments to the regulations for the Near Completer Grant Program, and authorize MHEC's attorneys to approve non-substantive revisions as necessary to conform the proposed regulations to the stylistic and formatting requirements of AELR and of the Division of State Documents.

**Commissioner Boyd** made a motion for approval and **Commissioner Coleman** seconded the motion. Clarifying questions were asked about the grant program and qualifications of the applicants. The motion was approved unanimously.

**Office of Student Financial Assistance – Updates on Maryland Community College Promise Scholarship and Teaching Fellows of Maryland Scholarship – Information Item**

**Chairman Hasan** recognized Ms. Thomas who provided updates on two scholarship programs. The Teaching Fellows of Maryland Scholarship has received 310 applications, and awards will be made before the end of the calendar year. The appropriation for this program is \$2 million. In 2019, the Maryland General Assembly passed legislation to open up the Maryland Community College Promise Scholarship to individuals who are in continuing education programs. Thus far, 250 inquiry forms have been received.

#### **Office of Research and Policy Analysis – 2019 Opening Fall Enrollment – Information Item**

**Chairman Hasan** recognized Dr. Barbara Schmertz, Director of the Office of Research and Policy Analysis, who introduced Ms. Sarahita Wyatt-Paige, Research Analyst, to provide an overview of the 2019 Opening Fall Enrollment report. Ms. Wyatt-Paige stated that the data in the report pertains to both undergraduate and graduate students, and is preliminary Fall 2019 enrollment data (submitted by the State's colleges and universities). The total headcount enrollment at Maryland's colleges and universities in Fall 2019 is 352,098, a decrease of 7,480 students (2.1%) over last year's enrollment. The number of first-time, full-time students decreased to 35,206, a decrease of 3.7% from last year. However, first-time, full-time enrollment at community colleges is 12,839, which is an increase of 2.5%, or 317 people, from Fall 2018. This increase could be due to the Promise Scholarship or individual recruitment efforts made by the colleges.

#### **Adjournment**

The meeting adjourned at approximately 10:39 a.m.



Larry Hogan  
Governor

Boyd K. Rutherford  
Lt. Governor

Anwer Hasan  
Chairperson

James D. Fielder, Jr., Ph. D.  
Secretary

## MEMORANDUM

**DATE:** January 22, 2020

**TO:** Maryland Higher Education Commissioners

**FROM:** Geoff Newman, Assistant Secretary for Finance and Administration

**SUBJECT:** Final Approval of COMAR Program Regulations—  
Workforce Readiness Grant

---

On September 25, 2019, the Commission approved for publication in the Maryland Register the enclosed new program regulations for the Workforce Readiness Grant (created by SB 515, enacted as Ch. 457 of the Acts of 2019). The regulations were published in the Maryland Register on November 22, 2019. The public comment period for the regulations ended on December 23, 2019, and no public comments were received.

The proposed regulations are ready for the Commission's final adoption.

**RECOMMENDATION:** It is recommended that the Commission approves for final adoption the attached regulations for the Workforce Readiness Grant, which were published in the Maryland Register on November 22, 2019.

# **Title 13B Maryland Higher Education Commission**

## **Subtitle 07 Community Colleges**

### **Chapter 06 Workforce Readiness Grant Program**

Authority: Education Article, §§ 11-105(u) and 16-321, Annotated Code of Maryland; Chapter 457, 2019 Laws of Maryland

#### **.01 Applicability.**

The criteria and procedures in this chapter apply to the Workforce Readiness Grant Program provided for by Education Article, § 16-321, Annotated Code of Maryland, as enacted by Chapter 457, 2019 Laws of Maryland.

#### **.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms defined.

(1) “College” means any public community college authorized to operate in the State and includes Baltimore City Community College.

(2) “Commission” means the Maryland Higher Education Commission.

(3) “Eligible Contribution” means the total amount or fair market value of monetary or equipment contributions pledged by an eligible donor to an eligible institution, and received by the college, that are specifically designated by the donor to improve the college’s technology, during a designated time period.

(4) “Designated Time Period” means:

(a) July 1, 2019, to June 30, 2021; or,

(b) July 1, 2021, to June 30, 2023.

(5) “Eligible Donor” means any individual, corporation, partnership, organization, or other form of business organization, public or private foundation, or other nonprofit organization, other than a local, state, federal, or foreign government.

(6) “Eligible Institution” means each campus of each college and does not include any foundation affiliated with the college or campus.

(7) “Technology” means any technology that will improve the college’s career and workforce instruction.

#### **.03 Reporting to Commission.**

A. No later than 60 days after the end of a designated time period, a college requesting matching funds from the State under § 16-321 of the Education Article shall provide to the Commission, for each eligible institution, a report containing the information set forth in § B of this regulation.

B. For each eligible donor, the college shall provide, in a format specified by the Commission:

(1) An itemized list of all monetary and equipment donations made during the designated time period that includes a description of the purpose for which the eligible contribution was or will be used; and,

(2) Documentation, from the donor, of each monetary or equipment donation made during the designated time period showing that the donation was specifically designated to improve the college’s technology.

C. A college shall provide additional or alternate documentation to the Commission upon the Commission’s request.

D. If a college requesting matching funds does not already provide a copy of its annual audit and management report to the Commission, it shall submit one within 90 days of the close of each fiscal year.

E. On or before August 1, 2022, and on or before August 1, 2024, a college shall provide to the Commission, for each eligible institution, a report specifying how all eligible contributions and state matching funds granted under this program were used.

#### **.04 Recordkeeping Requirements.**

A. Colleges shall maintain all records that document or support the information provided to the Commission under Regulation .03 of this chapter, including documentation showing the use of all eligible contributions and state matching funds granted under this program.

B. Records specific to this program shall be maintained separately from other donation records and provided to the state upon request.

C. All records relating to this program should be kept through June 30, 2029, or until audited, whichever is earlier.

#### **.05 Reporting to Governor.**

On or before October 1, 2021, and on or before October 1, 2023, the Commission shall provide to the Governor a list of the total eligible contributions made to each eligible institution during the preceding designated time period.



Larry Hogan  
Governor

Boyd K. Rutherford  
Lt. Governor

Anwer Hasan  
Chairperson

James D. Fielder, Jr., Ph. D.  
Secretary

## MEMORANDUM

**DATE:** January 22, 2020

**TO:** Maryland Higher Education Commissioners

**FROM:** Emily A. A. Dow, Ph.D., Assistant Secretary for Academic Affairs

**SUBJECT:** Proposed COMAR Changes to Associate of Arts in Teaching (A.A.T.)

The Maryland State Department of Education recently shared a policy change approved by the Maryland State Board of Education to accept a 3.0 Grade Point Average (GPA) in lieu of a passing score on an approved basis skills assessment when applying for a Maryland Educator Certificate (see attached memo).

COMAR identifies a specific associates degree, the Associate of Arts in Teaching (A.A.T.), for students at community colleges interested in becoming teachers. In light of the recent policy change at MSDE, regulatory changes for the A.A.T. need to be made to align with this policy change. These changes were requested by the A.A.T. statewide oversight committee and presented to the MHEC Segmental Advisory Council for review, circulation, and feedback. No further changes were requested by the Segmental Advisory Council.

The proposed COMAR regulations are for the purpose of aligning MHEC standards for the A.A.T. with the policy change implemented at MSDE.

**RECOMMENDATION:** It is recommended that the Commission approve for publication in the Maryland Register the enclosed regulations for regarding the Associate of Arts in Teaching, and authorize MHEC's attorneys to approve non-substantive revisions as necessary to conform the proposed regulations to the stylistic and formatting requirements of AELR and of the Division of State Documents.



## Amendments to COMAR Regarding AAT Requirements

*13B.02.03.24*

.24 Degree Programs.

A. Degree Levels.

(1) The degree levels described in this regulation are available to institutions in this State, as approved in accordance with COMAR 13B.02.02.10.

(2) Public community colleges and senior public higher education institutions shall comply with the credit hour standards of COMAR 13B.02.02.16A(1) and B(1).

B. Associate of Applied Science (A.A.S.).

(1) An institution may award an Associate of Applied Science (A.A.S.) degree for successful completion of not less than 60 and not more than 70 credit hours in vocational-technical occupational skills, including law enforcement, computer technology, and engineering technology.

(2) The program is intended for a student seeking immediate employment opportunities. However, the program does not preclude a student from transferring to a technical bachelor's degree program such as a bachelor's degree in technology or a bachelor's degree in technical or professional studies, or from transferring non-technical courses to a 4-year institution.

C. Associate of Arts (A.A.).

(1) An institution may award an Associate of Arts (A.A.) degree for successful completion of not less than 60 and not more than 70 credit hours in the liberal arts (social sciences, humanities, and similar subjects) and in the fine arts (music, art, etc.).

(2) The program is intended for transfer to an equivalent Bachelor of Arts (B.A.) degree program at 4-year institutions.

D. An institution may award an Associate of Art in Teaching (A.A.T.) degree that:

(1) Meets the lower-level degree academic content, outcomes, and requirements for teacher education, similar to the first 2 years of a bachelor's program in teacher education;

~~(2) Requires evidence of qualifying scores as established by the State Superintendent of Schools on the teacher certification tests approved by the State Board of Education;~~

~~(3) Requires a cumulative grade point average of at least 2.75 on a 4.00 scale; and~~

(2) Requires either:

(a) a 3.00 cumulative grade point average on a 4.00 scale, or

(b) a 2.75-2.99 cumulative grade point average on a 4.00 scale and qualifying scores on the basic skills assessment for teacher licensure as established by the State Superintendent of Schools and as approved by the State Board of Education; and

(43) If achieved, transfers up to 70 credit hours, satisfying all lower-division teacher education program outcomes without further review by in-State 4-year public and independent institutions.

E. - K. (text unchanged)





Larry Hogan  
Governor

Boyd K. Rutherford  
Lt. Governor

Anwer Hasan  
Chairperson

James D. Fielder, Jr., Ph. D.  
Secretary

## MEMORANDUM

**DATE:** January 22, 2020

**TO:** Maryland Higher Education Commissioners

**FROM:** Emily A.A. Dow, Ph.D., Assistant Secretary, Academic Affairs

**SUBJECT:** Final Approval of new COMAR Regulations—  
Private Inurement by Nonprofit Institutions of Higher Education

---

On September 25, 2019, the Commission approved for publication in the Maryland Register the enclosed regulations regarding “private inurement” by nonprofit institutions of higher education.

These regulations are required by House Bill 461 from the 2019 Legislative Session, which was a response to for-profit institutions that have reorganized as nonprofit institutions while engaging in transactions that primarily benefit private interests instead of the institution’s educational interests. Under the regulations, an institution must submit an annual report with information regarding their nonprofit status and certain transactions that may constitute private inurement. Upon receipt of the report, the Secretary will issue findings regarding these transactions. Institutions found to have engaged in private inurement will be able to participate in a corrective action process. If, after this process, the Secretary finds that the private inurement has not been remedied, MHEC will classify it as a for-profit institution. This classification allows MHEC to take certain actions to protect students, such as requiring an institution to provide a financial guarantee.

The regulations were published in the Maryland Register on November 22, 2019. The public comment period for the regulations ended on December 23, 2019. During this period, MHEC received five comments (attached), all strongly in support of the adoption of these regulations.

The proposed regulations are ready for the Commission’s final adoption, with a minor non-substantive change to the text of Regulation .02B(9)(c) to clarify the language, as reflected in tracked changes in the attached copy of the regulations.

**RECOMMENDATION:** It is recommended that the Commission approves for final adoption the attached regulations, including the non-substantive change reflected in the attached text, regarding “private inurement” by nonprofit institutions of higher education, which were published in the Maryland Register on November 22, 2019.



# Title 13B Maryland Higher Education Commission

## Subtitle 01 Nonpublic Schools

### Chapter 03 Classification of Nonpublic Institutions of Higher Education

Authority: Education Article, §§11-105(u) and 11-407.1, Annotated Code of Maryland; Ch. 515, Acts of 2019

#### .01 Purpose and Scope.

A. The purpose of this chapter is to provide a procedure for the Commission to determine if a nonpublic institution of higher education is a private nonprofit institution of higher education or a for-profit institution of higher education under Education Article, §10-101, Annotated Code of Maryland.

B. This chapter does not affect any rights or obligations of a nonpublic institution of higher education that are not governed by:

- (1) Education Article, Annotated Code of Maryland;
- (2) This title; or
- (3) Commercial Law Article, Title 13, Annotated Code of Maryland, and regulations promulgated thereunder.

#### .02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) “Commission” means the Maryland Higher Education Commission.
- (2) “Disqualified person” means any person who was in a position to exercise substantial influence over the affairs of the institution any time during the 5 years prior to the date of a transaction, and includes, but is not limited to:
  - (a) Current and former officers, directors, trustees, and key employees;
  - (b) Family members of current and former officers, directors, trustees, and key employees; and
  - (c) An entity in which a current or former officer, director, trustee, key employee, or family member thereof has at least 35 percent ownership.
- (3) “Excess benefit” means any economic benefit received by a disqualified person from an institution that exceeds the consideration, including services, given to the institution by the disqualified person.
- (4) “Excess benefit transaction” means any transaction in which an excess benefit is provided by the institution, directly or indirectly, to or for the use of any disqualified person.
- (5) “Family member” means a spouse, sibling, half-sibling, child, grandchild, great-grandchild, parent, grandparent, great-grandparent, or spouse of any relation listed in this definition.
- (6) “For-profit institution of higher education” has the meaning stated in Education Article, §10-101, Annotated Code of Maryland.
- (7) “Institution” means an institution of higher education and its affiliate organizations.
- (8) “IRS” means the United States Internal Revenue Service.
- (9) “Key employee” means an employee of an institution, other than an officer, director, or trustee, who meets all three of the following tests, applied in the following order:
  - (a) \$150,000 Test. The employee receives reportable compensation from the institution and all related institutions in excess of \$150,000 for the calendar year ending with or within the institution’s tax year.
  - (b) Responsibility Test. The employee:
    - (i) Has responsibilities, powers, or influence over the institution as a whole, similar to those of officers, directors, or trustees;
    - (ii) Manages a discrete segment or activity of the institution that represents 10 percent or more of the activities, assets, income, or expenses of the institution, as compared to the institution as a whole; or
    - (iii) Has or shares authority to control or determine 10 percent or more of the institution’s capital expenditures, operating budget, or compensation for employees.
  - (c) Top 20 Test. The employee ~~meets the \$150,000 Test and the Responsibility Test and~~ is one of the 20 employees, ~~that meets the \$150,000 Test and the Responsibility Test,~~ with the highest reportable compensation from the institution and related institutions for the calendar year ending with or within the institution’s tax year.
- (10) “Net earnings” means gross revenue less expenses.
- (11) “Person” means an individual, corporation, or other entity.
- (12) “Private inurement” means financial arrangements that primarily benefit private interests instead of the institution’s charitable interests, which include but are not limited to:
  - (a) A compensation arrangement or contract where there is no upper limit or is based on factors extrinsic to performance at, and benefit to, the institution;
  - (b) Use of gross revenue or net earnings to provide goods and services to an individual or entity that primarily benefits private interests instead of the institution’s charitable interests; or
  - (c) Payment in excess of the fair market value in exchange for goods or services that primarily benefit private interests instead of the institution’s charitable interests.

(13) "Private nonprofit institution of higher education" has the meaning stated in Education Article, §10-101, Annotated Code of Maryland.

(14) "Prohibited tax shelter transaction" has the meaning stated in 26 U.S.C. §4965(e)(1).

(15) Reportable Incident.

(a) "Reportable incident" has the meaning stated in Education Article, §10-101, Annotated Code of Maryland.

(b) "Reportable incident" includes the following activities:

(i) Providing a grant or other assistance to a disqualified person;

(ii) Having receivables from or payables to a disqualified person; or

(iii) Being a party to a business transaction with a disqualified person.

(16) "Secretary" means the Secretary of Higher Education.

### **.03 Delegation to Secretary.**

A. The Commission delegates to the Secretary the responsibility and authority to act on its behalf in the determination of whether an institution of higher education is a private nonprofit institution of higher education or a for-profit institution of higher education under Education Article, §10-101, Annotated Code of Maryland.

B. The Secretary shall prepare and present a report to the Commission by June 30 of each year and as otherwise requested by the Commission summarizing actions taken under this delegation.

### **.04 Criteria for Classification.**

A. An institution of higher education shall be determined to be a private nonprofit institution of higher education under § 10-101 of the Education Article if it:

(1) Benefits no person or entity through any part of its net earnings;

(2) Is legally authorized to operate as a nonprofit organization by each state in which it is physically located;

(3) Has been determined by the IRS to be an organization to which contributions are tax deductible in accordance with 26 U.S.C. 501(c)(3);

(4) Had no reportable incidents in the previous calendar year that:

(a) Are determined by the Secretary to constitute private inurement; and

(b) Were not satisfactorily corrected prior to the submission of the report in Regulation .05 of this chapter; and

(5) Timely files the report required under Regulation .05 of this chapter.

B. An institution shall be determined to be a for-profit institution of higher education under Education Article, §10-101, Annotated Code of Maryland, if it:

(1) Does not request classification as a private nonprofit institution of higher education by filing the report required under Regulation .05 of this chapter;

(2) Benefits any person or entity through any part of its net earnings;

(3) Is not legally authorized to operate as a nonprofit organization by each state in which it is physically located;

(4) Has not been determined by the IRS to be an organization to which contributions are tax deductible in accordance with 26 U.S.C. 501(c)(3);

(5) Had any reportable incidents in the previous calendar year that:

(a) Are determined by the Secretary to constitute private inurement; and

(b) Were not satisfactorily corrected prior to the submission of the report in Regulation .05 of this chapter;

(6) Knowingly fails to disclose a reportable incident in the report required under Regulation .05 of this chapter; or

(7) Does not timely file the report required under Regulation .05 of this chapter.

### **.05 Reporting Requirements.**

A. To be classified as a private nonprofit institution of higher education under Education Article, §10-101, Annotated Code of Maryland, an institution of higher education shall provide to the Secretary, by March 1 of each year, a report in a form prescribed by the Secretary.

B. In the report, the institution shall include the following:

(1) A certification that the institution:

(a) Benefits no person or entity through any part of its net earnings;

(b) Is legally authorized to operate as a nonprofit organization by each state in which it is physically located; and

(c) Is currently classified by the IRS to be an organization to which contributions are tax deductible in accordance with 26 U.S.C. 501(c)(3);

(2) A description of any reportable incidents in the previous calendar year and, for each reportable incident:

(a) An explanation of the basis for the institution's belief that the reportable incident does not constitute private inurement; and

(b) What, if any, corrective actions have been taken to date; and

(3) A declaration signed and dated by the chief executive officer of the school, under penalty of perjury, that the information in the report and any attachments to the report are true and correct.

#### **.06 Initial Review.**

- A. The Secretary may request additional information from an institution to determine its classification.
- B. The Secretary shall consult with the Consumer Protection Division of the Office of the Attorney General before determining that any reportable incident does not constitute private inurement.
- C. If the Secretary finds, based on all the information available to the Secretary, that the requirements of Regulation .04A of this chapter are met by an institution, the Secretary shall classify the institution as a private nonprofit institution of higher education under Education Article, §10-101, Annotated Code of Maryland, and send written notice of the determination to the institution no later than 45 days after submission of the report in Regulation .05 of this chapter.
- D. If the Secretary finds that an institution should be classified as a for-profit institution of higher education under Education Article, §10-101, Annotated Code of Maryland, the Secretary shall provide a written statement of findings, including the basis of the findings, to the institution no later than 45 days after submission of the report in Regulation .05 of this chapter.

#### **.07 Determination After Statement of Findings.**

- A. An institution may, within 20 days of receipt of a statement of findings under Regulation .06 of this chapter, submit to the Secretary a response and proposed corrective action plan.
- B. If the Secretary does not receive a response to the statement of findings within the specified time period, the Secretary shall issue a determination affirming the statement of findings and classifying the institution as a for-profit institution of higher education.
- C. Within 20 days of receipt of a response to the statement of findings, the Secretary shall:
  - (1) Issue a revised statement of findings and a determination classifying the institution as a private nonprofit institution of higher education;
  - (2) Issue a determination affirming the statement of findings and classifying the institution as a for-profit institution of higher education; or
  - (3) Notify the institution, in writing, that a determination is being deferred for the purposes of entering into a corrective action plan.
- D. The criteria used to determine the action the Secretary shall take under §C of this regulation shall include the egregiousness of the private inurement and the feasibility of satisfactory corrective action.
- E. Corrective Action Plans.
  - (1) A corrective action plan proposal shall include, at a minimum:
    - (a) A description of the measures necessary to remedy the private inurement;
    - (b) A description of the measures necessary to prevent recurrence of the private inurement; and
    - (c) A timeline for the completion of the corrective action.
  - (2) The Secretary may recommend modifications to the proposed plan, including periodic monitoring or progress reports.
  - (3) If the Secretary and the institution are unable to agree on a final corrective action plan within 10 days of the Secretary's deferment notification, the Secretary shall issue a determination classifying the institution as a for-profit institution of higher education.
  - (4) Upon agreement of the Secretary and the institution, a final corrective action plan may be modified due to a change in circumstances.
  - (5) If at any time the Secretary finds that an institution is not in compliance with the corrective action plan, the Secretary shall issue a notice to the institution stating the amount of time in which the institution must remedy the noncompliance.
  - (6) If the institution remains in noncompliance after the expiration of the time period in the notice of noncompliance, the Secretary shall issue a determination classifying the institution as a for-profit institution of higher education.
  - (7) If the Secretary finds that a corrective action plan has been satisfactorily completed, the Secretary shall issue a revised statement of findings and a determination classifying the institution as a private nonprofit institution of higher education.
- F. Any determination classifying an institution as a for-profit institution of higher education shall state the basis of the determination.

#### **.08 Hearings.**

- A. Requests.
  - (1) If, within 45 days after timely submission of a report under Regulation .05 of this chapter, an institution has not received a determination or a statement of findings, the institution may request a hearing before the Commission to determine its classification.
  - (2) If, within 20 days after timely submission of a response to a statement of findings, an institution has not received a determination or a notice of deferral, the institution may request a hearing before the Commission to determine its classification.
  - (3) If the Secretary issues a determination that an institution will be classified as a for-profit institution of higher education, the institution may, within 20 days of receiving notice of the determination, request a hearing before the Commission to determine if the classification was made in an arbitrary or capricious manner.
- B. A hearing requested under this regulation shall be conducted in accordance with the Administrative Procedure Act, State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and COMAR 13B.04.01.
- C. If, after a hearing, the Secretary's determination is upheld or the institution is determined by the Commission to be a for-profit institution of higher education under Education Article, §10-101, Annotated Code of Maryland, the institution has the right to judicial review as provided by State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

**.09 Effect of Classification.**

A. The Secretary may take any action regarding the institution that is permissible under Education Article, Annotated Code of Maryland, and this title for the Commission to take regarding a for-profit institution of higher education, after:

(1) The Secretary issues a determination of classification as a for-profit institution of higher education and no request for a hearing is received within 20 days;

(2) An institution has been determined to be a for-profit institution of higher education after a hearing arising from Regulation .08A(1) or (2) of this chapter; or

(3) The Secretary's determination of for-profit classification is upheld after a hearing arising from Regulation .08A(3) of this chapter.

B. An institution's nonprofit status shall be retained until the occurrence of one of the provisions of §A of this regulation.

C. Notwithstanding any corrective action, an institution's for-profit status shall be retained until the Secretary issues a determination classifying the institution as a nonprofit institution of higher education.

Emily A.A. Dow, Ph.D.  
Maryland Higher Education Commission  
6 North Liberty Street, 10th Floor  
Baltimore, MD 21201

December 18, 2019

**Re: Proposed Regulation 13B.01.03 – Classification of Nonpublic Institutions of Higher Education**

Dear Dr. Dow,

We write on behalf of the National Student Legal Defense Network (“Student Defense”) in response to Maryland’s proposed regulation regarding the classification of nonpublic institutions of higher education.

Student Defense is a non-partisan, 501(c)(3) non-profit organization that works, through litigation and advocacy, to advance students’ rights to educational opportunity and to ensure that higher education provides a launching point for economic mobility. Earlier this year, Student Defense released a report on accrediting agencies’ authority to oversee for-profit institutions that convert to non-profit status, including specific recommendations for heightened monitoring of those institutions after such a conversion takes place. Student Defense also provided technical assistance and testified in support of Maryland’s Private Nonprofit Institution of Higher Education Protection Act of 2019, the statute that provides the authority to regulate in this area.

We appreciate the opportunity to comment on this regulatory proposal. Given our expertise in this area, Student Defense strongly supports the proposed regulation and applauds Maryland’s continued efforts to protect students during non-profit conversions.

In recent years, numerous for-profit institutions have entered into transactions to modify their corporate structures in order to obtain nonprofit designations from both the Internal Revenue Service (“IRS”) and the United States Department of Education (the “Department”).<sup>1</sup> In fact, there is a growing trend of for-profit institutions using conversion to improve public image, avoid federal law, or some combination of the two. For example, a seemingly endless stream of scandals and legal settlements has soured public perception of the for-profit industry. To shed this bad reputation, for-profit schools are seeking non-profit status. At the same time, for-profit colleges also want to avoid

---

<sup>1</sup> As a basic principle, the Higher Education Act of 1965 (“HEA”), 20 U.S.C. § 1001 *et seq.*, and its implementing regulations require that a nonprofit institution of higher education: (i) be “owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which benefits any private shareholder or individual;” (ii) be “legally authorized to operate as a nonprofit organization by each State in which it is physically located;” and (iii) be “determined by the [IRS] to be an organization to which contributions are tax-deductible in accordance with section 501(c)(3) of the Internal Revenue Code.” 34 C.F.R. § 600.2 (defining “nonprofit institution”); *see also* 20 U.S.C. § 1002. The third prerequisite—an IRS determination—mandates that the IRS determine, among other things, that “no part of the net earnings” of the entity “inures to the benefit of any private shareholder or individual.” 26 U.S.C. § 501(c)(3). In other words, both the IRS and the Department must independently determine that the institution is owned and operated by a nonprofit corporation or association and that no part of the net earnings will benefit any private shareholder or individual.

the additional regulatory scrutiny placed upon the for-profit industry. At the federal level, the Higher Education Act requires any for-profit institution that participates in federal student aid programs to derive no more than ninety percent of its revenue from those programs, a restriction often referred to as “the 90/10 Rule.”<sup>2</sup> Because for-profit colleges are, on average, more expensive and lead students to take out more loans, they often find it difficult to comply with this rule.<sup>3</sup> But the 90/10 Rule does not apply to non-profit and public institutions, incentivizing for-profit institutions to pursue conversions in order to obtain greater financial freedom. As demonstrated by these examples, rarely is a desire to serve students the primary motivation for seeking non-profit status.

Even if it were, the profit-seeking behaviors that plague students attending for-profit colleges do not end simply because an institution changes its status. A newly converted non-profit might use lucrative management contracts, loans, lease arrangements, or other deals to keep revenue flowing to the school’s previous owners.<sup>4</sup> For that reason, effective state oversight is key during this transitional period.

Maryland’s proposed regulation regarding the classification of nonpublic institutions of higher education is a great first step towards ensuring responsible monitoring of all for-profit to non-profit conversions. For that reason, we strongly support the proposed regulation and the Commission’s continued work in this area.

Thank you for your attention to these important issues facing student loan borrowers. If you have any questions about this comment or would like any additional information, please contact Student Defense’s Counsel, Robyn Bitner, at [robyn@defendstudents.org](mailto:robyn@defendstudents.org).

Sincerely,

Student Defense

---

<sup>2</sup> 20 U.S.C. § 1094(b)(25), (d); *see also* 34 C.F.R. § 668.28.

<sup>3</sup> *See, e.g.*, Adam Harris, *The Lifelong Cost of Getting a For-Profit Education*, The Atlantic (Aug. 29, 2018), <https://www.theatlantic.com/education/archive/2018/08/for-profit-college-students-are-saddled-with-debt-they-cant-pay-back/568834/>.

<sup>4</sup> *See, e.g.*, Thomas J. Perrelli, Settlement Administrator, *Third Annual Report of the Settlement Administrator Under the Consent Judgements with Education Management Corporation (EDMC) as Succeeded by Dream Center Education Holdings*, at 20–17 (Oct. 1, 2017 – Sept. 30, 2018), available at: [https://defendstudents.org/news/body/nsldn\\_20190206f.pdf](https://defendstudents.org/news/body/nsldn_20190206f.pdf).



December 20, 2019

Maryland Higher Education Commission  
Dr. Emily A.A. Dow, Assistant Secretary of Academic Affairs  
6 N. Liberty St., 10th Floor  
Baltimore, MD 21201

*Comment submitted via email to: [emily.dow@maryland.gov](mailto:emily.dow@maryland.gov)*

Dear Assistant Secretary Dow:

We commend the Maryland Higher Education Commission (MHEC) for establishing regulations to enact the state's groundbreaking legislation that ensures nonprofit institutions of higher education do not distribute profits to individuals. We write in support of MHEC's proposed regulations 13B.01.03 *Classification of Nonpublic Institutions of Higher Education*.

At The Century Foundation, we have monitored colleges and universities that claim nonprofit status but enter into agreements or structures that mirror those found at for-profit corporations.<sup>1</sup> As scandals have affected the reputation of for-profit schools generally, a number of such schools have sought to convert to nonprofit status, but have done so in name only. Such *covert for-profits* tell students and the public they are nonprofit but have structured themselves via contracts or real estate deals that send revenue directly to the former owners--moves that are contrary to the prohibition against private inurement critical to the integrity of the nonprofit sector. Because of a lack of oversight from the United States Internal Revenue Service,<sup>2</sup> it is essential that states step in to ensure schools act with integrity when it comes to their residents' tuition dollars.

The spirit of Maryland's first-of-its-kind law is to ensure the state's nonprofit institutions of higher education act with financial integrity, as doing so increases the chances that schools meet their educational and public missions. One improvement that could be made to the regulations is to provide MHEC and institutions the same number of days to take action and/or respond to actions. As proposed, seemingly arbitrary timelines of 10, 20, and 45 days are included throughout the regulations.

---

<sup>1</sup> See: Robert Shireman. "The Colleges Say They're Nonprofit--But Are They?" *The Century Foundation*, September 5, 2019. <https://tcf.org/content/commentary/colleges-say-theyre-nonprofit/>

<sup>2</sup> See: Eric Fullilove and Ruth McCambridge. "IRS as Nonprofit Oversight? Without a Lot More Help, Don't Expect Much." *Nonprofit Quarterly*, May 22, 2019. <https://nonprofitquarterly.org/irs-as-nonprofit-oversight-without-a-lot-more-help-dont-expect-much/>

Finally, as colleges and universities across the nation experience enrollment contractions, institutions--even those with long and respectable histories--may be tempted to enter into arrangements that would easily or quickly financially sustain them but would be harmful to students and taxpayers because of underlying financial incentives. Therefore, we encourage MHEC to adopt the regulations as proposed and to avoid weakening the standards or creating exceptions.

Sincerely,

Stephanie Hall  
Fellow  
The Century Foundation

Robert Shireman  
Director of Higher Education Excellence and Senior Fellow  
The Century Foundation

David Halperin  
Attorney & Counselor  
1530 P Street NW 2nd floor  
Washington, DC 20005  
(202) 905-3434  
davidhalperindc@gmail.com

Ms. Emily A.A. Dow, Ph.D  
Assistant Secretary of Academic Affairs  
Maryland Higher Education Commission  
6 N. Liberty St., 10th Floor  
Baltimore, MD 21201  
By email to: [emily.dow@maryland.gov](mailto:emily.dow@maryland.gov)

Dear Dr. Dow,

I write in support of the Maryland Higher Education Commission's proposed regulations 13B.01.03, entitled Classification of Nonpublic Institutions of Higher Education.

For the past ten years I have been an active participant in public policy matters, including legislation and regulations, regarding for-profit higher education -- as an advocate, attorney, and investigative writer. I have testified about these issues before the U.S. House of Representatives Oversight Subcommittee on Economic and Consumer Policy, as well as at the Federal Trade Commission. On my website Republic Report, and in other publications, I have written extensively, in particular, about the risks of for-profit colleges converting to and gaining the benefits of non-profit status, yet maintaining structures and incentives that lead the institution to essentially act as a for-profit school, to the detriment of students and taxpayers.

In my judgment, the new proposed regulations are carefully and effectively crafted to fairly implement the intent of the underlying statute. The regulations achieve the goals of the statute without any extensive burden on schools. Legitimate non-profit schools should have no trouble and face no genuine risks from the rules.

Sincerely,

A handwritten signature in black ink, appearing to read "David Halperin", with a long horizontal flourish extending to the right.

David Halperin

December 20, 2019

Emily A.A. Dow, PhD, Assistant Secretary of Academic Affairs  
Maryland Higher Education Commission  
6 North Liberty Street, 10<sup>th</sup> Floor  
Baltimore, MD, 21201

Submitted via electronic mail to [Emily.dow@maryland.gov](mailto:Emily.dow@maryland.gov)

Re: 13B.01.03, *Classification of Nonpublic Institutions of Higher Education*

Dear Dr. Dow;

I am writing today on behalf of The Institute for College Access & Success in support of Maryland 13B.01.03, *Classification of Nonpublic Institutions of Higher Education*. The Institute for College Access & Success is a trusted source of research, design, and advocacy for student-centered public policies that promote affordability, accountability, and equity in higher education.

In the last several years, there has been a growing trend of for-profit institutions seeking to convert to nonprofit status- In part, it appears- to avoid complying with accountability metrics specific to the for-profit sector.<sup>1</sup> The federal gainful employment and 90/10 regulations put market-based safeguards in place to protect students by ensuring that programs do not require students to borrow amounts they will not be able to repay. In addition, the rule also ensures that schools are not solely dependent on revenues provided by federal loans and grants.<sup>2</sup>

There are serious questions regarding the governance structures these converted for-profit institutions have put in place. It is vital to ensure that the non-profit mission is being served and that revenues generated by the non-profit institution are not inuring to private parties or private shareholders. For example, Grand Canyon Education, Inc. (GCE) is seeking to rebrand the company as a third-party service provider to the newly formed non-profit Grand Canyon University (GCU), while continuing to direct the majority of revenue back to shareholders of the publicly traded GCE. On November 19, 2019, the Education Department wrote to GCU finding that:

“the Department has determined that GCU does not meet the operational test’s requirement that both the primary activities of the organization and its stream of revenue benefit the nonprofit itself. Rather, the materials that the Department has reviewed demonstrate that GCE and its shareholders – rather than Gazelle/GCU – are the primary beneficiaries of the operation of GCU under the terms of the MSA. This violates the most basic tenet of nonprofit status – that the nonprofit be primarily operated for a tax-exempt purpose and not substantially for the benefit of any other person or entity.”<sup>3</sup>

Another for-profit company, Zovio, is similarly seeking to transform itself into a service provider to Ashford University, the formerly for-profit college, while still collecting most of the the institution’s revenues. Zovio has disclosed that the Department of Education has placed a requirement that the University posts more than \$100 million letter of credit before approving the action, due to concerns about the stability of the institution.<sup>4</sup> Accreditors have also placed requirements on Ashford’s conversion in an attempt to ensure that trustees do not have financial interests in Zovio.

Together, Ashford and GCU enroll almost 100,000 students in exclusively online programs across the country, including in Maryland. With the passage of 13B.01.03 Maryland has taken an important step to ensure that institutions in Maryland that seek to convert are meeting the traditional requirements of nonprofit status and that that no person or entity is benefitting from the earnings of its private non-profit colleges. The proposed regulations set forth in the Maryland Register at 13B.01.03 provide a clear reporting mechanism to ensure that these institutions are meeting this requirement.

While it is a positive sign that the federal Department of Education is taking action to protect students and ensure institutional integrity, we have also seen widespread rollbacks of for-profit college accountability under the Trump administration. These include the repeal of the gainful employment rule and the issuance of a deeply flawed borrower rule.<sup>5</sup>

We appreciate the steps that Maryland is taking to ensure that institutions seeking to be recognized as non-profit entities are meeting the requirements of that designation. These regulations will have the direct effect of better protecting students attending both private non-profit and for-profit colleges in Maryland.

We support the proposed Classification of Nonpublic Institutions of Higher Education as it is an important measure that will help to protect Maryland students and taxpayers while ensuring institutional integrity.

Please let me know if any additional information would be useful to you.

Sincerely,

W. Brett Robertson, Policy Analyst

The Institute for College Access & Success

[brobertson@ticas.org](mailto:brobertson@ticas.org)

973.382.8660

---

<sup>1</sup> Robert Shireman, September 22, 2015. *The Covert For-Profit: How College Owners Escape Oversight through a Regulatory Blind Spot*. The Century Foundation, <https://tcf.org/content/report/covert-for-profit/>

<sup>2</sup> The Institute for College Access & Success, August 2019. *What to know about the gainful employment rule*. [https://ticas.org/wp-content/uploads/2019/08/what\\_to\\_know\\_about\\_GE\\_fact-sheet-1.pdf](https://ticas.org/wp-content/uploads/2019/08/what_to_know_about_GE_fact-sheet-1.pdf) ; The Institute for College Access & Success, January 25, 2016. *Q & A on the For-Profit College "90-10 Rule"*. <http://www.protectstudentsandtaxpayers.org/wp-content/uploads/2016/01/Final-90-10-QA-Jan-25-2016.pdf>

<sup>3</sup> U.S. Department of Education, November 6, 2019. *Letter to Brian Mueller re: Review of the change of ownership and conversion to nonprofit status of Grand Canyon University (OPE ID 00107400)*. <https://www.documentcloud.org/documents/6548148-Grand-Canyon-University-Decision-on-CIO-11-06-19.html>

<sup>4</sup> Hallie Busta, October 8, 2019. *Zovio: \$103M letter of credit required to spin off Ashford U*. Education Dive, <https://www.educationdive.com/news/zovio-103m-letter-of-credit-required-to-spin-off-ashford-u/564549/> ;

Lindsay McKenzie, October 8, 2019. *Ashford University Parent Company Weighs Sale*. Inside Higher Ed, <https://www.insidehighered.com/quicktakes/2019/10/08/ashford-university-parent-company-weighs-sale>

<sup>5</sup> *Coalition letter from 57 organizations in support of repealing the 2019 borrower defense rule*. December 9, 2019, [https://ticas.org/wp-content/uploads/2019/12/Coalition-Letter-on-BD-CRA\\_.pdf](https://ticas.org/wp-content/uploads/2019/12/Coalition-Letter-on-BD-CRA_.pdf) ; The Institute for College Access & Success, September 23, 2019. *Top 10 Ways the New Borrower Defense Rule is Worse for Borrowers*. [https://ticas.org/wp-content/uploads/2019/09/BD\\_Side-by-Side.pdf](https://ticas.org/wp-content/uploads/2019/09/BD_Side-by-Side.pdf) ; The Institute for College Access & Success, August 12, 2019. *What to Know About the Gainful Employment Rule*. [https://ticas.org/wp-content/uploads/2019/08/what\\_to\\_know\\_about\\_GE\\_fact-sheet-1.pdf](https://ticas.org/wp-content/uploads/2019/08/what_to_know_about_GE_fact-sheet-1.pdf)



December 23, 2019

Emily A.A. Dow, PhD, Assistant Secretary of Academic Affairs  
Maryland Higher Education Commission  
6 North Liberty Street, 10th Floor  
Baltimore, MD, 21201

Dr. Emily Dow:

We at Veterans Education Success are writing in support of Maryland 13B.01.03, *Classification of Nonpublic Institutions of Higher Education*.

Veterans Education Success was founded in 2013— in collaboration with the nation’s major veterans’ leaders, to advance higher education success for veterans, service members, and military families, and to protect the integrity and promise of the GI Bill and other federal education programs.

We are writing today in support of Maryland 13B.01.03 because it would ensure that institutions of higher education treated as nonprofits in Maryland are truly operating as nonprofits. This legislation is an important opportunity for Maryland to continue to protect students from “covert for-profit colleges,” looking to mislead them and dodge state oversight.

Low-income students, students-of-color, veterans, and foster youth are targeted aggressively in Maryland and beyond by bad actors in the for-profit school industry because these populations have the greatest access to the federal monies on which these institutions rely. To address these concerns, the General Assembly passed several bills over the past few years to increase oversight and create guardrails around for-profit colleges and private career schools.

However, today for-profit entities are starting to seek to use a “nonprofit” label to escape regulatory oversight as well as attract customers who are suspicious of the “for-profit” label. Institutions like Ashford University, known for their poor outcomes and low-quality education<sup>1</sup>, seek to bypass certain financial disclosure requirements and restrictions. Budget cuts and decreased oversight by the IRS has allowed some for-profit educational companies to create shell corporations and complicated, financial schemes to lay claim to nonprofit status. When these “covert nonprofit” schools are formed, they avoid adopting the financial restrictions legitimate nonprofit schools adhere to that actually protect consumers and taxpayers. Once they convert their tax status, the covert for-profit

---

<sup>1</sup> See <https://vetsedsuccess.org/ves-report-sampling-of-student-complaints-about-ashford-university/>



schools are able to skirt regulations put in place by states like Maryland seeking to protect students from this predatory industry.

Clarifying that Maryland's definition of a nonprofit only applies to schools that are truly operating as nonprofits ensures consumers are not deceived, the nonprofit school designation is not tarnished, and that tax benefits are not expanded to schools where shareholders' best interests are placed well above those of students.

At legitimate nonprofit and public schools, rampant deceptive, or unfair treatment of students is rare because of financial restrictions that make it difficult for school leaders to profit from the bad behavior. However, the for-profit school industry's ever-growing list of law enforcement actions<sup>2</sup> and poor behavior in Maryland and beyond demonstrates a need to put clear guardrails to ensure student and taxpayer protection.

We cannot afford to allow the integrity of the nonprofit and private university label to be tarnished by predatory for-profit schools masquerading as nonprofits. We hope you take this opportunity to protect all the students mentioned above – in addition to Maryland taxpayers – from high-cost, low-return for-profit colleges and private career schools seeking to hide behind the nonprofit tax status.

For all of these reasons, we strongly support the proposed Classification of Nonpublic Institutions of Higher Education as it is an important measure that will help to protect Maryland students and taxpayers while ensuring institutional integrity.

Best,

Ramond Curtis  
State Policy Manager  
Veterans Education Success  
[Ramond@VetsEdSuccess.org](mailto:Ramond@VetsEdSuccess.org)

---

<sup>2</sup> see <https://vetsedsuccess.org/law-enforcement-actions-against-predatory-colleges/>





**Larry Hogan**  
Governor

**Boyd K. Rutherford**  
Lt. Governor

**Anwer Hasan**  
Chairperson

**James D. Fielder, Jr., Ph. D.**  
Secretary

## **Maryland Higher Education Commission 2020 Meeting Dates**

The Maryland Higher Education Commission (MHEC) is Maryland's higher education coordinating board responsible for the management of statewide financial aid programs and the establishment of statewide policies for public and private colleges and career schools to support students' postsecondary pursuits.

### **Meeting Dates and Locations**

January 22, 2020	July 22, 2020 (if needed)
February 26, 2020	August 26, 2020 (if needed)
March 25, 2020	September 23, 2020 9:30am to 3:30pm
April 22, 2020	October 28, 2020
May 20, 2020 *Please note date change.*	November 18, 2020 *Please note date change.*
June 24, 2020	December 16, 2020 *Please note date change.*

**All Commission meetings will be held on the 4<sup>th</sup> Wednesday of each month from 1:00pm to 4:00pm at the Maryland Higher Education Commission in the 7<sup>th</sup> Floor Board Room located at 6 N. Liberty Street, Baltimore, MD 21201, unless otherwise noted.**

**Dates and times are subject to change.**

<http://www.mhec.maryland.gov/About/Pages/Meetings.aspx>