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M E M O R A N D U M

DATE: August 25, 2021

TO: Maryland Higher Education Commissioners

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

SUBJECT: Emergency Adoption and Approval of Proposed Amendments to COMAR – Financial Guarantee Requirements for Private Career Schools

Under Education Article, § 11-203, Annotated Code of Maryland, Private Career Schools (PCS) 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 MHEC the discretion to increase that amount. By regulation, MHEC 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. A summative chart is provided below.

Currently, if a PCS, seeks to offer a hybrid or fully online program, the school is expected to hold a financial guarantee equal to 100% of total tuition liability, regardless of financial viability or how long the institution has been operating. This requirement has not changed since it was instituted in 2004.

	Fully On-Site Programs		Hybrid Programs or Fully Online Programs
	Financially Viable	Not Financially Viable	
Non-Title IV School	Total Tuition Liability 100%	Total Tuition Liability 100%	Total Tuition Liability 100%
Title IV School Open 1-5 years	Total Tuition Liability 100%	Total Tuition Liability 100%	Total Tuition Liability 100%
Title IV School Open 6-10 years	Non-Title IV Tuition Liability 100%	Total Tuition Liability 50%	Total Tuition Liability 100%
Title IV School Open 10+ years	Non-Title IV Tuition Liability 100%	Total Tuition Liability 30%	Total Tuition Liability 100%

With many PCSs operating in either a hybrid or fully online modality due to the pandemic, this requirement poses a significant financial burden to the schools. In some instances, the financial guarantee for an online or hybrid program might be as much as ten times higher than the same program offered in a traditional format, making it essentially prohibitive for private career schools to offer online education. In turn, this can make it difficult for many students, who have often been traditionally underserved, to pursue postsecondary education. Additionally, this added financial requirement replicates efforts at the federal level to provide student protections should a school close.

The enclosed proposed regulatory amendments eliminate the distinction between modalities as a factor in calculating a financial guarantee. With this change, financial guarantee calculations for hybrid and fully online programs would be the same as programs in a traditional format, with a minimum guarantee of 100% of non-Title IV tuition liability and an increased guarantee based on how long the institution has been operating and if the institution is financially viable. The proposed regulatory change was discussed at the MHEC Private Career School Advisory Council meeting on July 20, 2021; the Council provided general support in moving forward with the proposed change.

These proposed regulatory amendments are enclosed for your review and approval for publication in the Maryland Register. These amendments have been approved for legality by MHEC's Assistant Attorneys General as required by the Maryland Administrative Procedure Act.

Upon approval, proposed regulations and regulatory amendments are submitted to the legislature's Joint Committee on Administrative, Executive, and Legislative Review (AELR), after which they are submitted to the Division of State Documents (DSD) for publication in the Maryland Register. After a public comment period, they may be brought back before the Commission for final adoption.

In addition to requesting approval for the customary regulatory process, emergency adoption is recommended to allow schools to continue to offer hybrid and online education without interruption. Emergency regulations become effective ten days after approval by AELR and expire six months later. Therefore, it is necessary to simultaneously submit the proposed regulations through both processes to make a permanent regulatory change.

RECOMMENDATION: It is recommended that the Commission:

- (1) Approves for publication in the Maryland Register the enclosed proposed regulatory amendments to the Private Career School regulations regarding financial guarantees for distance education;
- (2) Pursuant to § 10-111 of the State Government Article of the Annotated Code, declares that emergency adoption of the regulations is necessary and approves the enclosed amendments for emergency adoption; and
- (3) Authorizes its Assistant Attorneys General to make non-substantive edits to the proposed regulations to conform to the stylistic and formatting requirements of AELR and DSD.

Title 13B MARYLAND HIGHER EDUCATION COMMISSION

Subtitle 01 NONPUBLIC SCHOOLS

Chapter 01 Minimum Requirements for Private Career Schools

Authority: Education Article, Title 11, Subtitles 1, 2, and 4; State Government Article, Title 10, Subtitle 2; Annotated Code of Maryland

.19 Financial Guarantee.

A. A financial guarantee required by this chapter shall be:

- (1) In the form of a performance bond or an irrevocable letter of credit;
- (2) Made under the terms and conditions determined by the Secretary, including the conditions that the school shall:

- (a) Perform faithfully all agreements or contracts it makes with its students; and

- (b) Comply with Education Article, Annotated Code of Maryland, and with this chapter;

- (3) Made payable to the Secretary on behalf of the Commission, and provided to the Secretary;

- (4) Between the Commission and the surety; and

- (5) In the amount the Secretary requires, which at a minimum shall be:

- (a) The amount prescribed by §B of this regulation, if the school is a non-Title IV school;

- (b) The amount prescribed by §C of this regulation, if the school is a Title IV school; or

- (c) The amount prescribed by §D of this regulation, if the school is a Title IV school that has been notified by the U.S. Department of Education of an adverse, or potentially adverse, action affecting the school's participation in Title IV; ~~or,~~

- ~~(d) The amount prescribed by §E of this regulation, if the school delivers its programs in whole or in part by distance education.~~

B. Financial Guarantee Amount — Non-Title IV Schools. A non-Title IV school shall provide a financial guarantee in an amount sufficient to cover 100 percent of the total tuition liability of the school.

C. Financial Guarantee Amount — Title IV School.

- (1) Minimum Amount. A Title IV school shall maintain a financial guarantee in an amount sufficient to cover 100 percent of the total non-Title IV tuition liability of the school, unless a greater amount:

(a) Is deemed necessary by the Secretary; or

(b) Is required by the provision of this §C.

(2) During a Title IV school's 1st through 5th years of operation, the school shall provide a financial guarantee in an amount sufficient to cover 100 percent of the total tuition liability of the school.

(3) During a Title IV school's 6th through 10th years of operation, the school shall provide a financial guarantee in an amount sufficient to cover:

(a) 50 percent of the total tuition liability of the school, if the school does not meet financial viability requirements set forth in §F of this regulation, and if 50 percent of the total tuition liability of the school is greater than 100 percent of the school's total non-Title IV tuition liability;

(b) 100 percent of the school's total non-Title IV tuition liability, if the school meets the financial viability requirements set forth in §F of this regulation; or

(c) A greater amount if deemed necessary by the Secretary.

(4) After a Title IV school's 10th year of operation, the school shall provide:

(a) A financial guarantee in an amount sufficient to cover 30 percent of the total tuition liability of the school, if the school does not meet the financial viability requirements set forth in §F of this regulation, and if 30 percent of the total tuition liability is greater than 100 percent of the school's total non-Title IV tuition liability;

(b) A financial guarantee in an amount sufficient to cover 100 percent of the school's total non-Title IV tuition liability, if the school meets the financial viability requirements set forth in §F of this regulation; or

(c) A greater amount if deemed necessary by the Secretary.

D. Financial Guarantee Amount — Title IV Schools Notified of Potentially Adverse Action by the U.S. Department of Education.

(1) If the U.S. Department of Education notifies a Title IV school that the school is subject to an adverse or potentially adverse action, including any action that limits, suspends, terminates, or otherwise negatively affects the school's participation in Title IV, the school shall notify the Commission in accordance with regulation .06 of this chapter.

(2) Upon receipt of the school's notice under §D(1) of this regulation, or on the Secretary's own initiative, the Secretary may require the school to provide a financial guarantee in an amount deemed necessary by the Secretary to protect students, up to 100 percent of the school's total tuition liability.

~~E. Financial Guarantee Amount — Schools Delivering Programs in Whole or in Part by Distance Education. A school that delivers a program in whole or in part by distance education shall provide a financial guarantee in the amount prescribed by §§B—D of this regulation, plus an amount sufficient to cover the sum of the tuition of each program delivered in whole or in part by distance education, multiplied by the maximum permissible enrollment for that program.~~

~~F. Reduced Financial Guarantees Based on Financial Viability.~~

(1) Upon submission of its annual report under Regulation .06 of this chapter, a school that provides a financial guarantee in an amount greater than 100 percent of its non-Title IV tuition liability may request in writing that the

Secretary reduce the school's financial guarantee amount, in accordance with the criteria set forth in §§B—E of this regulation.

(2) The school's request shall include the two most recent audited financial statements of the school, and of any corporate parent or holding company of the school.

(3) The Secretary may grant the school's request if the Secretary finds that:

(a) The financial statements and other relevant financial information, including external accounting reports, demonstrate that the school and its ownership meet the financial viability requirements set forth in §F(4) of this regulation, operate in accordance with sound principles of financial management, and maintain financial resources adequate for the satisfactory conduct of the school; and

(b) A reduction of the financial guarantee is appropriate under the criteria set forth in §§B—E of this regulation.

(4) Financial Viability Requirement. A school is considered financially viable if its financial statements, and those of its corporate parent or holding company, demonstrate that the school and its ownership, for each of the 2 most recent years:

(a) Had a net income that exceeded expenditures; and

(b) Maintained at least a 1:1 ratio of total current assets to total current liabilities.

(5) In no instance shall a financial guarantee of a school be reduced below an amount equal to 100 percent of the school's total non-Title IV tuition liability.

.26 Interactive Distance Education by Private Career Schools—Commitment to Support.

A. A school shall demonstrate a commitment to ongoing support, both financial and technical, and to a continuation of the program for a period sufficient to enable a student to complete a program.

B. A school shall ~~forward provide~~ a financial guarantee ~~in the form of a performance bond or an irrevocable letter of credit that is sufficient to cover the tuition liability of a program delivered in part or whole by distance education. The bond or letter of credit shall be in an amount and under terms and conditions determined by the Secretary and made payable to the Secretary of Higher Education. The completed bond or letter of credit shall be forwarded to the Secretary of Higher Education in accordance with Regulation .19 of this chapter.~~