

UNREASONABLE Duplication

The Commission’s charge under HB 1244 (Ch. 963, Acts of 2024):

The Commission is required to adopt regulations on procedures for conducting an analysis of objections that clearly identify all of the specific criteria and factors used by the Commission. There are four objections total: (1) inconsistency of a proposed program with the institution’s mission, (2) not meeting a regional or statewide need in the State Plan for Higher Education, (3) unreasonable duplication, and (4) unnecessary duplication.

For **unreasonable duplication**, an institution may object based on “*unreasonable program duplication which would cause harm to the State or students attending institutions of higher education in the State.*”

For an objection based on unreasonable program duplication, the legislature identified two priorities for the regulations.

First, the Commission must prioritize meeting State and regional workforce needs (as identified in the most recent appendix of the State Plan for Higher Education) and preserving existing programs that are able to meet State and regional workforce needs. This shall be done by using baseline data and common sources developed in conjunction with the Maryland Departments of Labor and Commerce for the appendices to the State Plan for Higher Education.

Second, the Commission must prioritize collaboration between institutions of higher education.

13B.02.03.09 Unreasonable Program Duplication.

X. INSERT LANGUAGE: This applies to undergraduate programs using new resources and graduate programs using existing resources; in other words, undergraduate programs using existing resources are exempt from this analysis.

A. Pursuant to Education Article, § 11-206.2(e)(1)(iii), Annotated Code of Maryland, approval or recommendation of a proposed new program or substantial modification of an existing program may not result in unreasonable program duplication that would cause harm to the State or students attending institutions of higher education in the State.

B. The purpose of this regulation is to set forth:

- (1) Principles and policy regarding unreasonable program duplication;
- (2) General rules governing the existence of unreasonable program duplication; and
- (3) The criteria and factors the Commission will use to determine if unreasonable program duplication exists.

C. The primary purposes of reviewing academic program proposals for unreasonable duplication are to ensure that:

(1) State resources are appropriately distributed among institutions of higher education; and

(2) Public institutions of higher education and State-aided independent institutions of higher education are collaborating to provide a wide spectrum of educational programs for residents of the State and the region.

D. An institution of higher education shall use the criteria and factors in this regulation to:

- (1) Analyze potential unreasonable program duplication prior to the submission of academic program proposals or letters of intent;
- (2) Demonstrate the nonexistence of unreasonable program duplication within an academic program proposal or letter of intent;
- (3) Determine if the institution has a rationale for the filing of objection based on unreasonable program duplication;
- (4) Demonstrate the existence of unreasonable duplication within an objection filing.

E. Elimination of Duplication by Institutions.

(1) If an institution identifies potential unreasonable program duplication in the development of a program proposal or letter of intent, the institution shall:

- (a) Reconsider whether or not to submit a program proposal;
- (b) Revise the program proposal to eliminate any potential duplication; and
- (c) Reach out to the institution with the existing program in good faith to discuss collaboration and cooperation within the subject of the proposal.

(2) Institutions with existing programs that receive requests to collaborate shall engage with other institutions in good faith.

F. General Rules.

(1) Unreasonable program duplication does not exist unless the two programs are at the same degree or certificate level.

(2) Unreasonable program duplication does not exist if the development of a new program or discipline is identified as needed to meet a State or regional workforce shortage on the annual appendix to the State Plan for Higher Education regarding State or regional workforce shortage.

(3) Unreasonable program duplication is most likely to exist within specialty programs, subdisciplines, professional degrees, and occupation-specific programs. With the approval of the Commission, the Secretary may publish a list of existing unique academic programs within any degree or certificate level which may not be proposed without prior permission of the Secretary.

(4) Duplication is presumed not to exist if an existing program is a basic, common, or core program at a particular degree or certificate level. In addition to or within the disciplines listed in this section, the Secretary may publish a list of specific basic, common, or core programs within any degree or certificate level.

(5) Duplication of Lower Division Programs. Because every community college in the State serves a different region of the State, duplication of an associate's degree program, a lower division certificate, or other academic program at one community college by another community college is not unreasonable.

(6) Duplication of Upper Division Certificates and Bachelor's Degrees. At the bachelor's degree level, basic, common, or core programs in the liberal arts, social sciences, theoretical sciences, business, and education are not unreasonably duplicative.

(7) Duplication of Master's Degrees, Post-baccalaureate Certificates, and Graduate Certificates. Common programs in the traditional liberal arts, social sciences, and theoretical sciences are not unreasonably duplicative.

(8) Duplication of Doctoral Degrees. All proposals for doctoral degrees shall be reviewed for unreasonable program duplication.

(9) When circulating a program proposal, the Commission will notify institutions if unreasonable program duplication is unlikely to exist based on the rules in this section.

G. Determination of Unreasonable Duplication.

(1) Determination of duplication is a qualitatively analytic process that cannot be determined by a particular set of metrics, but instead depends upon the unique circumstances in each situation.

(2) Steps.

(a) In determining whether a program is unreasonably duplicative, the Secretary shall first review basic indicators of duplicative content.

(b) If qualitative review of the basic indicators demonstrates a substantial difference between the content of the proposed program and existing program, the Secretary shall find that unreasonable program duplication does not exist.

(c) If qualitative review of the basic indicators does not demonstrate a substantial difference between the content of the proposed program and existing program, the Secretary shall use a course-by-course analysis to determine if the content of the programs is substantially similar.

(d) If the program content is determined to not be substantially similar, the Secretary shall find that unreasonable program duplication does not exist.

(e) If the program content is substantially similar, the Secretary will then determine if duplication is unreasonable and if it would cause harm to the State or students attending institutions of higher education in the State.

(3) Process and Criteria for Determining if Program Content is Substantially Similar.

(a) The Secretary shall first consider the following basic indicators of duplicative content:

- (i) Learning objectives;
- (ii) Projected competencies and skills;
- (iii) Intended employment upon program completion, including the distinction between scholarly/academic employment and professional employment;
- (iv) Licensure, certification, stackable credentials, or industry recognitions;
- (v) Program title;
- (vi) Requested or recommended CIP code;
- (vii) Program accreditation;
- (viii) Program modality and, if applicable, the geographic distance between the two institutions; and
- (ix) The intended student population for the programs, including admissions requirements and existing student body.

(b) Consideration of these factors shall be a holistic analysis and the Secretary may weigh the importance of each factor depending on the elements of the program proposal.

(c) If qualitative review of the basic indicators demonstrates a substantial difference between the content of the proposed program and existing program, the Secretary shall find that unreasonable program duplication does not exist.

(d) If review of the basic indicators does not demonstrate a substantial difference between the programs, the Secretary shall perform a course by course analysis to determine if the program content is substantially similar, using:

- (i) Course titles;
- (ii) Course objectives;

- (iii) Course descriptions;
- (iv) Experiential learning requirements and opportunities;
- (v) If applicable, any requirement to develop original scholarship; and
- (vi) Required and available concentrations and specialties.

(4) Factors in Determining if Program Duplication is Unreasonable.

(a) The priority factor in unreasonable program duplication is State and regional workforce need, as identified in the most recent annual appendix of the State Plan for Higher Education, as determined using the criteria and analysis used in the formulation of the appendices to the State Plan for Higher Education.

(b) If the Secretary finds that there is no workforce need for the proposed program, the Secretary shall find that the program duplication is unreasonable.

(c) Additional Factors. The Secretary may also consider:

- (i) Student demand for the program (i.e. student market supply);
- (ii) The availability of sufficient faculty to staff both programs;
- (iii) The mission of each institution;
- (iv) Potential opportunities for the institutions to collaborate; and

(v) Any other factor presented by the proposing or objecting institution that may assist the Secretary in making a determination.

(5) Harm to the State or Students Attending Institutions of Higher Education in the State. Examples of such harm include, but are not limited to:

(a) Inefficient or inappropriate use of State resources;

(b) Interference with the State's statutory responsibilities regarding HBIs;

(c) If applicable, potential unavailability of clinical placements or other experiential learning opportunities for students; and

(d) Changes to the program or opportunities within the program leading to the loss or lack of availability of faculty advisors, increases in program cost, or increases in time to completion.