

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 294

(Senator Ellis, *et al.*)

Education, Health, and Environmental Affairs

Appropriations

Higher Education - Annual Revenues of For-Profit Institutions - Limitation on Enrollment (Veterans' Education Protection Act)

This bill 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 applies to either (1) two out of three of the immediately preceding fiscal years or (2) two consecutive years. By December 1, 2020, the Maryland Higher Education Commission (MHEC) must adopt regulations to implement the bill. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: MHEC can adopt the required regulations and likely review additional financial information using existing resources. To the extent enforcement is required for institutions that violate the requirement, additional staff resources may be required. Revenues are not directly affected.

Local Effect: None.

Small Business Effect: Potential meaningful, as discussed below.

Analysis

Bill Summary: The bill applies to a for-profit institution of higher education approved to operate in the State, a for-profit institution that enrolls Maryland residents in a fully online distance education program in the State, and a for-profit private career school approved to

operate in the State. An institution or school must also (1) be approved by MHEC to receive education assistance under the federal Post-9/11 Veterans Educational Assistance Act of 2008 and (2) have received funds to pay for students' tuition, fees, or other institutional charges through Title IV of the federal Higher Education Act of 1965 during the prior academic year. The bill also specifies that the funding received is for the tuition, fees, and other institutional charges collected per full-time equivalent student enrolled that would not be covered in full by the amount of the maximum level of federal Pell Grant funds.

Current Law/Background: A federal rule known as 90/10 caps the share of revenue for-profit institutions of higher education and private career schools can take in from federal student aid at 90%; however, the cap exempts federal tuition benefits for veterans and active members of the U.S. military (and their spouses and financially dependent children) because the law only applies to federal Title IV education funds. A 2016 [report](#) by the U.S. Department of Education revealed that many for-profit schools would likely exceed the 90/10 federal funding limits if revenue from U.S. Department of Veterans Affairs (VA) and U.S. Department of Defense (DOD) programs were included in the 90/10 calculation the same way Title IV funds are included. A 2019 [report](#) by the Brookings Institution found a similar result; according to their research, 24% of institutions serving all for-profit students would have failed the 90/10 rule in 2015 if military education benefits were included. In contrast, including veterans benefits in the 90/10 rule appears to have little effect on public and private nonprofit institutions.

The intent of the 90/10 rule is to show that institutions can attract funding from sources other than solely from the federal government, as a proxy for quality. The exemption of military education funds from the 90/10 rule has created a well-documented incentive for certain for-profit institutions to target enrollment by eligible service members, veterans, and their families in an effort to more easily meet the 10% nonfederal aid requirement.

Title IV

Title IV of the Higher Education Act of 1965 covers the administration of the federal student financial aid programs in the United States. Generally, Title IV student loans are dischargeable if a school or institution closes prior to the individual receiving a degree if other arrangements are not made. An individual's non-Title IV tuition is generally not dischargeable and may not be otherwise recoverable. Non-Title IV tuition and fee revenues of an institution are tuition and fees that are not covered by federal financial aid.

85/15 Rule for Veterans

In addition to the 90/10 rule regarding revenue discussed above, the 85/15 rule applies to the percentage of students using military VA benefits. Under this rule, in general, the VA will not approve enrollment in any course for an eligible veteran not already enrolled for

any period during which more than 85% of the students enrolled in the course are having all or part of their tuition, fees, or other charges paid for them by the educational institution or by VA benefits.

The 85/15 rule applies to enrollees and does not address the aggregate annual revenue. However, this provision limits and protects the amount of funding for each program at an approved institution derived from the VA and DOD. The federal law does incorporate a provision for a waiver of this rule. Additional provisions exempt from the 85/15 rule those military personnel (and their dependents) and institutions located on or adjacent to a military installation and a facility of the National Guard.

Number of Schools and Institutions

According to MHEC, as of January 2020, there were 140 private career schools, 7 for-profit institutions approved to operate in Maryland, and 14 for-profit institutions required to register.

Small Business Effect: Many private career schools are small businesses. To the extent that a private career school is unable to enroll new Maryland residents due to the requirements in the bill, a private career school may need to seek new sources of approved revenue or potentially close. It is unknown how many schools this bill will impact; however, it could be significant.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 593 (Delegate P. Young, *et al.*) - Appropriations.

Information Source(s): Maryland Higher Education Commission; U.S. Department of Education; Brookings Institution; *Inside Higher Ed*; Department of Legislative Services

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