



Maryland Consumer Rights Coalition

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

July 23, 2017

Re: Regulation .01-.03 COMAR13B.02.06 Financial Guarantees and the Maryland Guaranty Fund for For-Profit Institutions of Higher Education

Dear Assistant Secretary Dow:

The Maryland Consumer Rights Coalition advances fairness and justice for Maryland consumers through research, education, direct service, organizing, and advocacy. On behalf of our 8,500 individual supporters, as well as the undersigned organizations, I appreciate the opportunity to provide comments on the Maryland Higher Education Commission's (MHEC) proposed regulation on the Maryland Guaranty Fund for For-Profit Institutions.

In 2016, MCRC released our report "*Making the Grade: An Analysis of For-Profit and Career Schools in Maryland*" which found that 66% of students at for-profit schools take out student loans for programs that cost two to five times more than their public school counterparts. For-profit schools recruit low-income students and those from communities of color. Our report found that of African-American students enrolled in postsecondary institutions, 62% were enrolled at for-profit and private career schools.

We supported legislation (SB427/HB741) to strengthen transparency, reporting, and protections for students enrolling in for-profit and private career schools. The legislation also created a Guaranty Fund for students at for-profit schools, similar in composition as the Guaranty Fund for students at private career schools. The legislative intent was to provide protections for students currently enrolled in for-profit schools, so that if a school closes, the student can recoup the tuition they spent pursuing their education. Where possible, we believe the For Profit Guaranty Fund should be structured in the same way the private career school Guaranty Fund is—both for replicability, ease of implementation, and enforcement.

Given the costs of tuition and the amount of student loan debt incurred by those attending for-profit schools, it is critical that the Guaranty Fund serve as a safety net for students whose schools closed suddenly or whose institutions did not fulfill its obligations outlined in agreements and contracts with the student, as well as for other reasons as determined by the Secretary.



For these reasons, there are areas under the proposed regulations that are of great concern, as detailed below.

#### **.04 Uses of the Fund, A. (1), (2)**

The proposed regulations state that the fund will be used *“to provide a full refund of tuition and fees that have not been reimbursed or discharged:”*

As the goal of the creation of the Guaranty Fund is for MHEC to provide the reimbursement through the Fund, the regulations as written are unclear. If the regulations are meant to suggest that aggrieved students first seek reimbursement or discharge through the federal Department of Education (DOE), we find this recommendation to be deeply troubling.

There are a number of reasons that it is unwise to refer Maryland students to first seek relief from the DOE. In the first place, as of June 2017, the DOE has 68,000 applications for relief which are awaiting review<sup>1</sup>. Many former for-profit students have been waiting 24 months or longer to learn whether or not they have been approved for relief<sup>2</sup>. While they wait, students must pay their student loans, despite the fact that the institution failed to provide students adequate education as outlined in its contracts and agreements. Failing to provide relief to debt-ridden students is a bad economic decision. If students receive debt relief, they will be able to pursue new educational opportunities and inject money back into Maryland’s economy with their greater purchasing power. If they are indebted for years while awaiting relief, these students will contribute to a lagging state economy. Moreover, the DOE has signaled that it may weaken protections that were promulgated under the Obama Administration. In the current environment, it is better for Maryland to move swiftly to protect its students rather than await the federal government. Finally, federal law and regulations are often considered a floor, rather than a ceiling so it’s important that Maryland take the lead in creating protections that expand upon and deepen federal law. In fact, in 13B.01.01.18 the establishment of the Guaranty Fund for private career school students, the purpose of the fund is clear and unequivocal *“to reimburse a student who is entitled to a refund of tuition and fees because the institution has failed to.”* We believe that the For Profit Guaranty Fund should be consistent with the private career school Guaranty Fund regulations, wherever possible.

#### **Recommendation**

For these reasons we recommend that MHEC STRIKE the phrase *“that have not been reimbursed or discharged”* as well as most of (2) and insert the following so that it will read as:

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<sup>1</sup> Cowley, Stacy and Patricia Cohen “U.S. Halts New Rules Aimed at Abuses by For-Profit Colleges”; New York Times; June 14, 2017

<sup>2</sup> *ibid*



.04 Uses of the Fund, A. (1) (2) will read as “to provide a STUDENT WHO IS ENTITLED TO A full refund of tuition and fees because the institution has failed to: a) faithfully comply ...”

#### **07. Fund Accounting, Annual Assessment, and Special Assessment**

- A.** We recommend that the Secretary make an annual accounting of the Fund as done in the private career school Guaranty Fund rather than current language which suggests an accounting *as appropriate*. This will provide a clear structure and enable MHEC to act quickly if the fund is underfunded.
- B.** If the funds are insufficient, consistent with legislative intent, we believe the Secretary must levy a special assessment so that the Fund is able to reimburse students as required by law.

**Recommendation:** Change “may” to “shall” so that 07.C reads as follows “If the monies in the Fund are insufficient to pay pending claims, the Secretary *shall* issue a special assessment ...”

#### **08. Filing Claims**

**B)** This section details what a student must do in order to file a claim with the Guaranty Fund. Our concern is that as written the regulations state that students are required to, at a minimum, submit a large amount of information. Many students may not have all of this information readily available and as written, is unnecessarily burdensome. We recommend that the regulation be revised to require a student to submit the following information *to the extent possible*.

The First Report of Claim form is critical since it will enable former for-profit school students to seek relief. It is critical that this form does not deter students from completing and filing the form. We recommend that the First Report of Claim be posted in a conspicuous position on the MHEC website and be written in accessible language.

**B. (4).** As previously noted, it may be difficult for students to retrieve the documentation. It is unclear what kind of documentation would be required and unlikely that the students would have it. We recommend that the requirement to include relevant documentation be struck, or alternately modified to state “any relevant, *available* documentation.”

**B. (5).** We agree that the form should include the remedy requested but we believe the form should provide some illustrative examples of the kinds of remedies available for certain actions.

**D.** This section requires a student to seek relief, if applicable, for the Department of Education prior to seeking relief from Maryland’s Guaranty Fund. Given the 68,000 case back-log at DOE and the fact that former students have been waiting years for a response to their claim, this provision creates an undue



hardship for Marylanders who had been enrolled in a for-profit college. These Marylanders will be paying off their student debts despite the fact that they may not have received a degree from the school or gotten a job in their field despite graduating. This provision may have the unintended consequence of causing a student to go back-and-forth between the DoE and MHEC in an endless cycle. We find this provision extremely troubling and recommend that this entire paragraph be struck.

**Recommendation:** Strike “D” in its entirety

**G) (3)** Section G details additional information that the Secretary may require including students complete transcripts. Yet, transcripts are one of the hardest documents to obtain from a school. In the ITT closure last September, students as well as MHEC officials had trouble obtaining complete transcripts when the school locked its doors after its abrupt closure.

**Recommendation:** Strike G (3) in its entirety

**G (5)** As noted above, we do not believe that students or former students should have to request that USED or a loan servicer discharge all or part of a student’s loans; therefore we recommend eliminating this section.

**Recommendation:** strike G (5) in its entirety.

**G (6)** Requires former students to detail all lenders or loan servicers, account, and contact information. This may be possible if it is a federal loan but will be more difficult if the loan is with a private loan servicer or debt collector. Moreover, for profit students as well as those who graduated from traditional schools have filed numerous complaints against student loan servicers for incorrect information, failure to credit accounts properly and more. A recent CFPB report found a 325% increase in student loan servicing complaints over the past year<sup>3</sup>.

**Recommendation:** strike G (6) in its entirety.

## 09. Claim Adjudication

This section describes the process for determining whether or not a claim for reimbursement from the Guaranty Fund is granted. As such, it is a critical section and the regulations set forth must be clear, consistent, and transparent. The regulations should also strive not to be burdensome or particularly onerous for a student to follow. Given the import of this section, we have some concerns with several sections proposed in the regulations.

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<sup>3</sup> Friedman, Zack “Student Loan Complaints Skyrocket 325%”; [Forbes](#); June 23, 2017



At the federal level, the Department of Education has signaled an interest in weakening borrower defense rules; therefor, Maryland should not condition a claim for relief on a former student also filing a claim at the federal level because it is unclear whether that will remain a recourse in the near future. Furthermore, where-ever and whenever possible, the new Guaranty Fund should be congruent with Maryland's private career school Guaranty Fund. This will create efficiencies of scale in terms of management, implementation, and enforcement of the Fund. It will also ensure that both funds are clear and straight-forward in their approach to assessing claims and providing relief.

**Recommendation:** Strike 09.E in its entirety

**09.(F)** This section addresses the conditions under which a former student will be perceived as suffering no damages (and presumably their claim would be denied) under the school close-out section. First, this section contravenes the legislative intent which was to provide relief to former students whose school closed in a disorderly manner. Secondly, one of the reasons that a person would not be eligible is if s/he had applied for or was eligible for a discharge – as noted above, applying for or being eligible for a discharge is not the same as receiving a discharge from DOE. Moreover, as noted in the New York Times, there is a backlog of 68,000 cases and many former students are waiting 24-36 months before receiving a reply. In this scenario, a former student in Maryland who applies for a discharge, could wait 36 months for a reply from DOE, while being expected to pay her student loan for those 36 months regardless of whether she has a degree. Meanwhile, she could not seek relief in Maryland because she is eligible for a discharge. This undermines the wrong that the law was trying to right. And it places an enormous substantive burden on the student to prove harm rather than on the for-profit school to prove that there was no harm.

**Recommendation:** Strike Section F in its entirety

**09.(G)** This section reiterates that a student may not receive relief for loans that are eligible for discharge.

**Recommendation:** Strike section G in its entirety.

**09. (H) (3).** Rather than requiring a student to request and authorize the Secretary to attempt to have the loan officer discharge all or a portion of the student's debts, this should be structured as an opt-out, rather than an opt-in. So, unless a student refuses to authorize the Secretary to do so, the Secretary will attempt to have all or a portion of the student's debts discharged.

**09.(I)** This section outlines what a student would need to do to petition for a reconsideration if their claim is denied. We agree that the student should have the right to appeal and suggest strengthening the process by expanding the denial letter to include a clear explanation of why the claim was denied,



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the process for reconsideration, and examples of the kinds of evidence that would support a request for reconsideration.

**10. (D) Administration of the Fund**

This section states that the Secretary may appoint an advisory council. Again, to maintain parity with the private career school Guaranty Fund, we recommend replacing 10 (D) with 13.B.010.18 (N) . :

- (1) The Secretary shall appoint an advisory council to whom the Secretary may refer matters pertaining to the Guaranty Student Tuition Fund for For-Profit Institutions of Higher Learning.
- (2) The advisory council shall meet periodically for the purpose of reviewing matters pertaining to the Fund that are referred by the Secretary for the council's consideration and advice.

**12. Notice to Students**

The claim itself should be written in clear and accessible language and this notice should be clear and conspicuous on MHEC's website.

We appreciate the opportunity to comment on these proposed regulations. We would welcome the opportunity to meet to discuss these concerns in person, or alternately, recommend that MHEC schedule a public hearing for these proposed regulations.

Best,

Maryland Consumer Rights Coalition  
Hyland Law Firm, LLC  
Maryland CASH Campaign  
Higher Ed, Not Debt  
Center for Responsible Lending