

July 1, 2021

The Honorable James Fielder, Jr.
Secretary of Higher Education
Maryland Higher Education Commission
6 North Liberty Street
Baltimore, MD 21201
Cc: Emily Dow

Dear Dr. Fielder:

The Maryland Consumer Rights Coalition (MCRC) along with the undersigned organizations are writing today to express our concern over the delay in proposing regulations to implement SB294 The Veterans' Education Protection Act which was enacted into law in May 2020.

The law passed unanimously in both the House and Senate with an effective date of July 1, 2020. Furthermore, the law specified that the Maryland Higher Education Commission (MHEC) was to adopt regulations to carry out this section **on or before December 1, 2020**.

Yet, six months after the regulations were required to be adopted, MHEC has not published draft regulations to begin the process toward adoption. We are extremely troubled by this delay in implementing the law. In the fiscal and policy note that accompanied the legislation, analysts found that MHEC could *'adopt the required regulations and likely review additional financial information using existing resources'*. Given that MHEC has the resources to adopt these regulations, the failure to do so is deeply disturbing.

Why the Veteran's Education Protection Act is Needed

The federal Higher Education Act states that for-profit colleges may not collect more than 90% of their revenue from Title IV federal student aid programs. However, due to a loophole, the G.I. bill, Defense Department tuition assistance and foster youth funding for college are not included in the 90%. Consequently, for-profit colleges have aggressively recruited veterans and vulnerable youth. The for-profit college sector is riddled with problems of its own making, including higher costs, larger debt and default rates, and lower graduation and employment rates than public institutions. More concerning are the numerous lawsuits and settlements alleging unfair and deceptive practices including a \$191 million dollar settlement the [FTC](#) reached with the University of Phoenix which found the University of Phoenix used deceptive

advertising about job prospects and aggressively targeted military veterans and Hispanic students. The Consumer Protection Division also announced settlements resulting in debt cancellation with [Career Education Corporation](#) and entities related to ITT Tech.¹

For-Profit Colleges Request a Delay

On May 10, 2021, for-profit colleges and industry groups operating in Maryland sent a letter to you urging MHEC to continue to delay promulgating regulations despite the fact that this delay is already excessive. In the letter, the leaders of the for-profit industry in Maryland argue that because the federal government recently passed a similar measure, MHEC should further delay developing regulations until after the federal government's regulations are finalized. Then, they urge that the Maryland regulations be interpreted and enforced identically to the federal regulations.

This letter is nothing more than another desperate attempt to delay closing the 90/10 loophole in Maryland. This past legislative session, for-profit colleges and industry leaders supported legislation which purported to protect students at for-profit colleges, but in fact, weakened the Veteran's Education Protection Act. Since MHEC has not drafted legislation, it is unreasonable and counterfactual to assert that the Veteran's Education Protection Act will harm these for-profit colleges as they suggested in legislative hearings. Wisely, the General Assembly rejected this sham legislation.

After that attempt to weaken regulations failed, for-profit colleges are now urging MHEC to delay the rulemaking even further citing concerns about harmonization and preemption. However, we strongly disagree with their analysis, reasoning and conclusions and it seems, based on your spokesperson's statement in a *Higher Ed Dive* article, that you do as well.

Why MHEC Must Act Now to Promulgate Regulations

Urgency. Time is of the essence in developing regulations for the 90/10 rule. There are numerous, well-documented concerns with the operation (and abrupt closure) of for-profit colleges operating in Maryland. The General Assembly expressly urged swift action in closing this loophole in order to protect veterans and foster youth from aggressive recruitment by these high-cost, predatory schools. Failure to develop regulations for legislation that was passed

¹ <https://www.marylandattorneygeneral.gov/press/2019/061419b.pdf>
<https://www.marylandattorneygeneral.gov/press/2020/091520.pdf>

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as an emergency measure both flouts the will of the General Assembly and the desire of the state to protect veterans and foster youth.

Legal challenges. Moreover, delaying implementation of the law may lead to legal challenges. In 2018, Betsy DeVos lost a federal lawsuit that was filed against her when she delayed implementation of the Obama-era Borrower-Defense rule. The lawsuits claimed she was running roughshod over the regulatory process by delaying implementation. Delays in implementation by MHEC could face similar challenges.

The May 10 letter also raises the specter of preemption as a cause for concern, stating that the federal law may preempt Maryland's state Veteran's Education Protection Act. It won't. As you well know, the triad, consisting of the Department of Education, states, and accreditors, share overlapping regulatory authority for institutions of higher education, which leaves clear space for each to take action to protect students. Maryland law and the regulations implementing those laws may, and in many ways (such as Maryland's enhanced protections for students attending institutions that abruptly close) already do, provide stronger protections for Maryland students than are provided under federal law. Should there be any inconsistency between the federal or state 90/10 rule, students would get the benefit of the stronger rule. And if MHEC felt that minor changes to its regulations were needed to comport certain aspects with federal regulations, MHEC could easily publish new regulations after the federal regulations are finalized.

It is also conceivable that these regulatory delays do not comport with the Maryland Administrative Procedure Act and any agency violations of the act need to be addressed as well.

Protecting Veterans and Youth. Delaying rule-making only serves one purpose: further enriching predatory for-profit colleges. As long as the Maryland law is not fully implemented, these high-cost, low-return colleges can continue to target and enroll veterans and foster youth at these institutions. It is in their interest, and solely in their interest to delay the rule.

The letter from for-profit colleges also wrongly asserts that Maryland's law becomes effective in 2023 so there is no harm in delaying rule-making. That is simply incorrect. As you know, the law took effect July 1, 2020, thereby triggering the requirement for you to adopt regulations by December 1, 2020. MHEC should adopt regulations as soon as possible so it can begin the process of collecting information from for-profit colleges and private career schools to determine whether or not at least 10% of their annual revenue is from a source other than federal funds, inclusive of veteran and foster youth funding. That will allow you to effectively

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enforce the law's prohibition on for-profit colleges enrolling new students in fiscal year 2023 if the schools fail this revenue test.

The Department of Education's administrative rulemaking on this topic will not be complete until fall of 2022 at the earliest. Waiting until the federal rule-making process concludes is likely to push the reporting necessary for you to enforce the Maryland law well into 2022 or 2023. This would likely also delay the statutorily required prohibitions on enrollment past the date in the law that they must commence.

There is no reason to delay. The General Assembly expressed urgency when passing the law. The fiscal and policy note stated MHEC could use existing resources to draft regulations. For-profit colleges continue to be the subject of scathing commentary and damning research. Delaying these regulations does a disservice to veterans and foster youth and only serves the for-profit industry.

We urge you to propose regulations for implementation of the Maryland Veteran's Education Protection Act in the next 30 days. We welcome the opportunity to meet with you and discuss the process and timeline for moving forward this critical piece of legislation.

Best,

Marceline White
Executive Director

AFT-Maryland
Baltimore Teachers Union
Center for Responsible Lending
National Association for College Admission Counseling
New America
Stephanie Hall, The Century Foundation
Student Borrower Protection Center

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