

Program Approval Process Workgroup

Senator Nancy King, Co-Chair
Delegate Stephanie Smith, Co-Chair

Agenda

Monday, August 14, 2023

3:00 p.m.

Virtual Meeting

- I. Call to Order and Opening Remarks**
- II. Presentation on Maryland Higher Education Commission Program Approval Process**

Dr. Emily Dow, Assistant Secretary, Academic Affairs
- III. Presentation on Program Approval Process from Institution Perspective**

Dr. Katherine Gantz, Vice President for Academic Affairs, St. Mary's College of Maryland
- IV. Presentation on HBCU Lawsuit and Chapter 41 and 42 of 2021**

Shane Breighner, Policy Analyst, Department of Legislative Services
Sara Baker, Senior Policy Analyst, Department of Legislative Services
- V. Closing Remarks and Adjournment**

**General Assembly of Maryland
Program Approval Process Workgroup
2023
Membership Roster**

**Senator Nancy J. King, Co-chair
Delegate Stephanie Smith, Co-chair**

Senator Ron Watson

Delegate Kevin M. Harris

President, St. Mary's College of Maryland

Tuajuanda Jordan

Vice President of Academic Affairs, Wor-Wic Community College

Kristin Mallory

**Professor and Director, Morgan State University, Robert M. Bell Center for
Civil Rights in Education,**

Pace McConkie

President, University of Maryland, College Park Campus

Darryl Pines

President, Maryland Independent Colleges and University Association

Matthew Power

Secretary, Maryland Higher Education Commission

Sanjay Rai

Program Approval Process Workgroup

Senator Nancy King, Co-Chair
Delegate Stephanie Smith, Co-Chair

Tuesday September 19th at 10:00 a.m. (virtual)

Tuesday October 24th at 10:00 a.m. (virtual)

Tuesday November 7th at 10:00 a.m. (virtual)

Tuesday November 28th at 10:00 a.m. (in-person)

Back-up date:

Tuesday December 12th at 10:00 a.m. (in-person)

Maryland Higher Education Commission



Presentation to the Program Approval Process Workgroup

Information presented here is based on current statutory and regulatory processes:

Education Article §§ [11-206](#) and [11.206.1](#)

Code of Maryland Regulations (COMAR) [13B.02.03](#)

Last Revised: Aug 11, 2023

Focus for Today's Presentation

- Overview of data: Proposals, objections, and review meetings
 - Quick Overview of Process
- Criteria for a full program review
 - Definition of substantial modification
- Objection process
- Criteria to determine when a proposed new program is considered unreasonable / unnecessary duplicative
 - Use of missions and institutional plans
 - State workforce needs and use of State plan

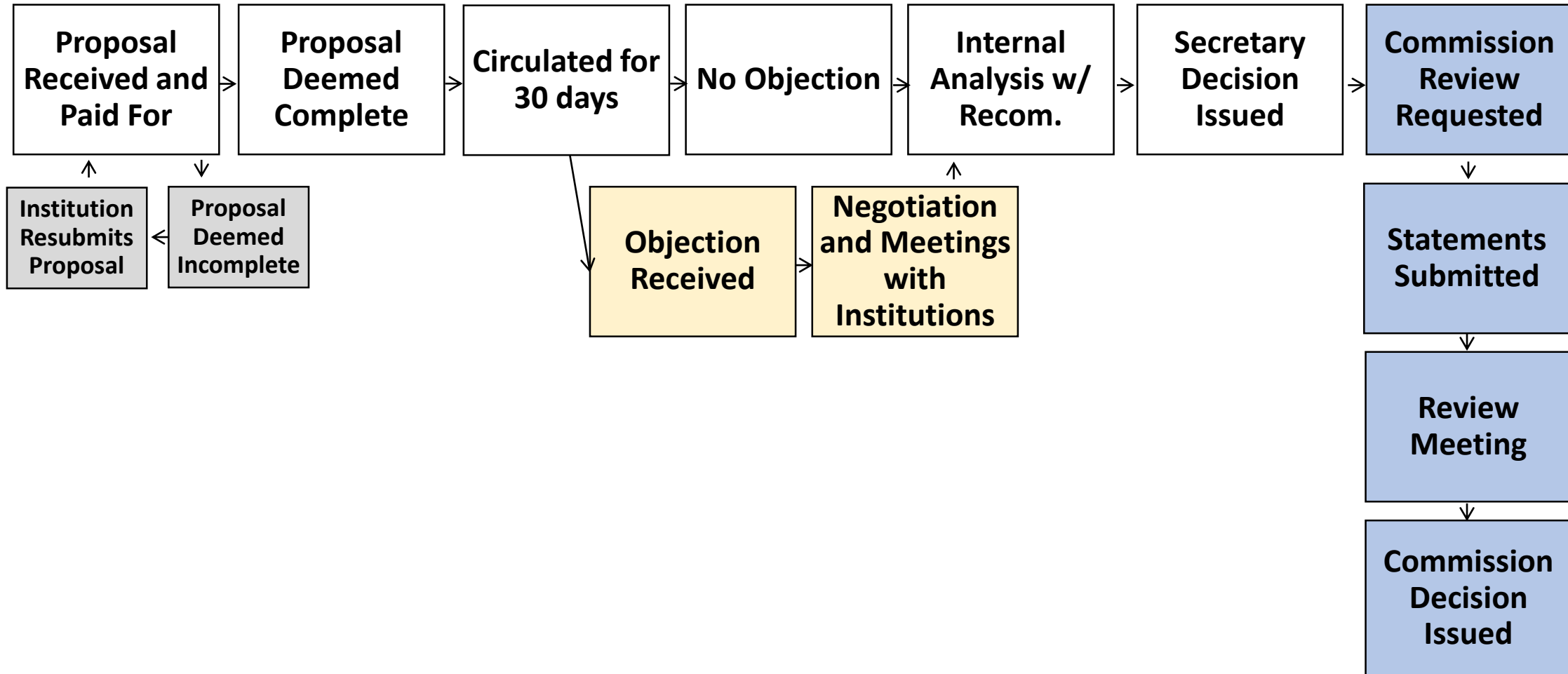
Data: Recent Proposals, Objections, & Review Meetings



	2017	2018	2019	2020	2021	2022	2023*
# of all proposals	404	528	581	735	406	706	398
# of new/sub mods	93	137	171	126	166	162	96
# of objections	3	9	9	11	5	8	3
# of review meetings	0	3	3	2	1	4	4

* as of August 11, 2023

Academic Program Review Process



Criteria for a Full Program Review

New Academic Programs

- A program leading to a formal award in a subject area in which the award is not presently authorized;
- A program in a subject area in which a formal award is offered at a different degree level;
- A new undergraduate major by combining course work offered in two or more existing programs; or
- A formal award of a different type in a subject matter area in which another formal award at the same level is already offered.

Substantial Modifications to Existing Programs

- Change more than 33 percent of an existing program's course work;
- Offer an existing program as an off-campus program;
- Establish a new area of concentration within an existing program; or
- Establish a new program title within an approved program.

Criteria for a Full Program Review

.06 Criteria for Program Review.

A program proposal shall address the following areas:

- A. Centrality to mission and planning priorities, relationship to the program emphasis as outlined in the mission statements, and an institutional priority for program development;
- B. Critical and compelling regional or Statewide need as identified in the State Plan;
- C. Quantifiable and reliable evidence and documentation of market supply and demand in the region and service area;
- D. Reasonableness of program duplication, if any;
- E. Relevance to the implementation or maintenance of high-demand programs at HBIs;
- F. Relevance to the support of the uniqueness and institutional identities and missions of HBIs;
- G. Adequacy of curriculum design, program modality, and delivery to related learning outcomes, consistent with Regulation .10 of this chapter;
- H. For public institutions, adequacy of articulation and transfer planning, consistent with Regulation .19 of this chapter;
- I. Adequacy of faculty resources, consistent with Regulation .11 of this chapter;
- J. Adequacy of library resources, consistent with Regulation .12 of this chapter;
- K. Adequacy of physical facilities, infrastructure, and instructional equipment, consistent with Regulation .13 of this chapter;
- L. Adequacy of financial resources with documentation, consistent with Regulation .14 of this chapter;
- M. Adequacy of provisions for evaluation of program, consistent with Regulation .15 of this chapter;
- N. Consistency with the Commission's minority student achievement goals;
- O. Relationship to low productivity programs identified by the Commission; and
- P. Adequacy of distance education programs under Regulation .22 of this chapter.

Objection Process: Circulation

Does the proposal need to be circulated for a 30-day objection/comment period?

Not all proposals require circulation.

Proposals that require circulation:

- New academic programs (degrees and stand-alone certificate programs)
- Substantial modification to an existing program

Yes

Proposal is emailed to distribution list and posted to MHEC [website](#).

See next slide for next step.

Proposals that may not require circulation:

- Certificates within existing programs
- Non substantial modifications
- Closed site approval
- Modality change
- Title change
- Notification of a program suspension/reactivation of suspended program/discontinuation of a suspended program

No

Internal analysis is conducted and recommended action is prepared for review.

Final decision is made and institution is notified.

Objection Process

Has an objection been received?

Yes

Proposing institution is notified of objection and provided an opportunity to respond.

Secretary determines if objection is justified.

If justified, Secretary negotiates with applicable institutions.

Additional information may be collected.

Potential collaborations between institutions is considered.

Internal analysis is completed and recommended action is prepared for review.

Final decision is made and institution is notified.

No

Internal analysis is completed and recommended action is prepared for review.

Final decision is made and institution is notified.

Objection Process: What Makes a “Justified Objection”

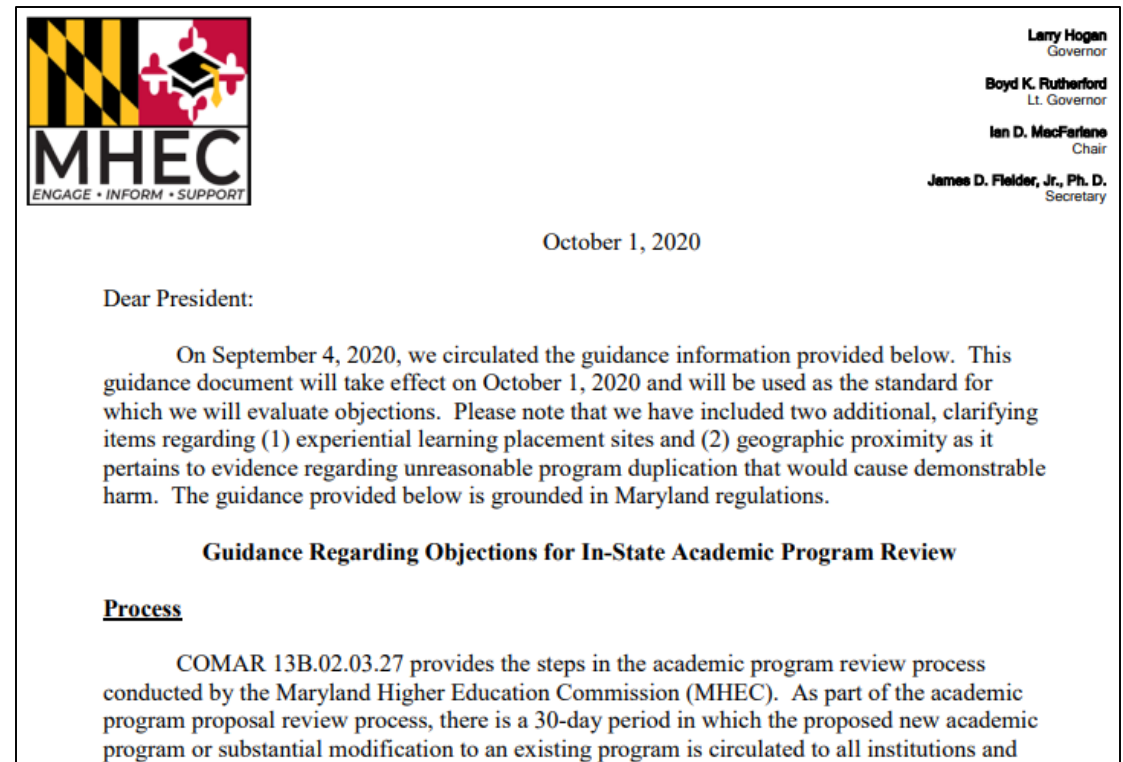
What should be included in an objection? What makes an objection justified?

An objection is justified if:

(a) if it is based upon the one of the 4 criteria

-- and --

(b) is accompanied by detailed data and information supporting the reasons for the objection.



**these are regulatory standards = Commission can change*

Criteria for Unreasonable/Unnecessary Duplication

Duplication Analysis

- ✓ *The elimination of unreasonable program duplication is a high priority.*
 - ✓ *Ordinarily, proposed programs in undergraduate core programs consisting of basic liberal arts and sciences disciplines are not considered unnecessarily duplicative.*
 - ✓ *Unreasonable duplication is a more specific concern in vocational/technical, occupational, graduate, and professional programs which meet special manpower needs. The issue of how a proposed program meets an institution's local and State area needs shall be addressed.*

Criteria for Unreasonable/Unnecessary Duplication

In determining whether a program is unreasonably duplicative, the Secretary shall consider:

- The degree to be awarded
- The area of specialization
- The purpose or objectives of the program to be offered
- The specific academic content of the program
- Evidence of equivalent competencies of the proposed program in comparison to existing programs
- An analysis of the market demand for the program

The analysis shall include an examination of factors, including:

- Role and mission
- Accessibility
- Alternative means of educational delivery including distance education
- Analysis of enrollment characteristics
- Residency requirements
- Admission requirements
- Educational justification for the dual operation of programs broadly similar to unique or high-demand programs at HBIs

Criteria for Unreasonable/Unnecessary Duplication



Q1: Is there duplication?

- Are the degrees the same?
- Are the areas of specializations the same?
- Are the admission requirements to the programs the same?
- Is the purpose (or are the objectives) of the programs the same?
- Is the specific academic content of the program the same?
- Are the competencies the same?

Q2: Is the duplication reasonable?

- Is the market demand for *student enrollment* to the proposed program not currently met by existing programs in Maryland?
- Is there market demand in Maryland for *graduates* of the program?
- Are there differences in the role and mission of the institutions?
- Is the existing program a unique or high demand program at an HBCU?
- Is there an educational justification for the duplication with an HBCU/HBI?

Q3: Will the duplication cause demonstrable harm?

- Would there be harmful changes in enrollment to existing programs?
- Would there be a saturation of clinical placement sites that would harm existing programs?
- Demonstrable v presumptive harm

Criteria for Unreasonable/Unnecessary Duplication



What is evidence?

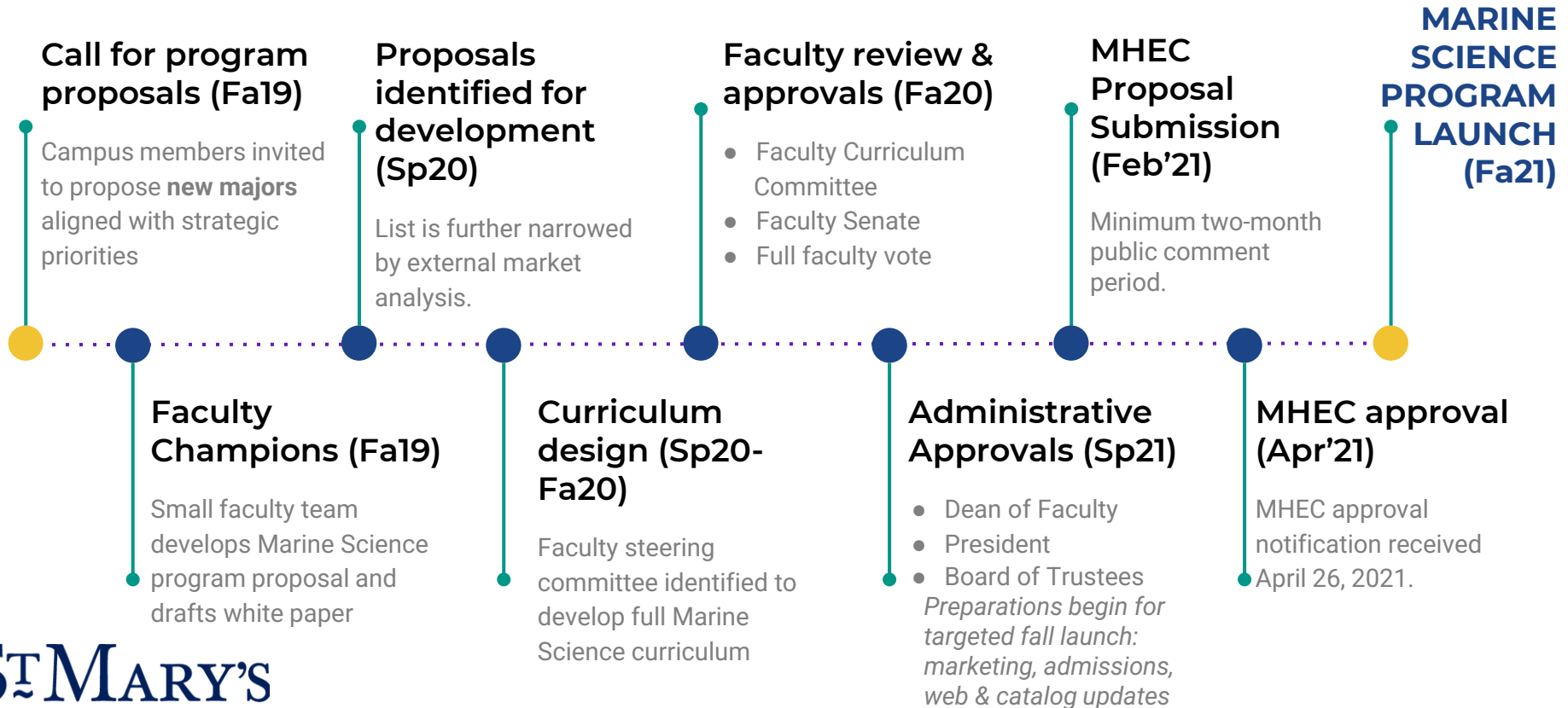
detailed data and information

- ✓ Labor projections from the Maryland Department of Labor
- ✓ US Department of Labor Occupational Outlook Handbook
 - ✓ Market surveys
- ✓ Current enrollment and degree data for existing programs
 - ✓ Course descriptions
 - ✓ Accreditation materials
- ✓ Materials from national professional organizations
 - ✓ Clinical Placement Sites

Additional Information for Reference

- [Maryland Academic Program Inventory](#) (API)
- General Overview of Process
 - Presentation to the Commission (May 24, 2023)
 - [Slides](#)
 - [Recorded Presentation](#) (starts around minute 33)
- Materials from November 1, 2022 training
 - [MHEC Academic Program Review](#)
 - [State Plan Presentation](#)
 - [Articulation Agreements Presentation](#)
 - [Objections Presentation](#)
 - [Commission Review Presentation](#)
 - [Duplication Analysis Presentation](#)

Marine Science Major at St. Mary's College of Maryland: Path from inception to launch



Overview of the Coalition vs. MHEC Lawsuit and Academic Program Approval Report

SARA BAKER AND SHANE BREIGHNER
DEPARTMENT OF LEGISLATIVE SERVICES
AUGUST 14, 2023

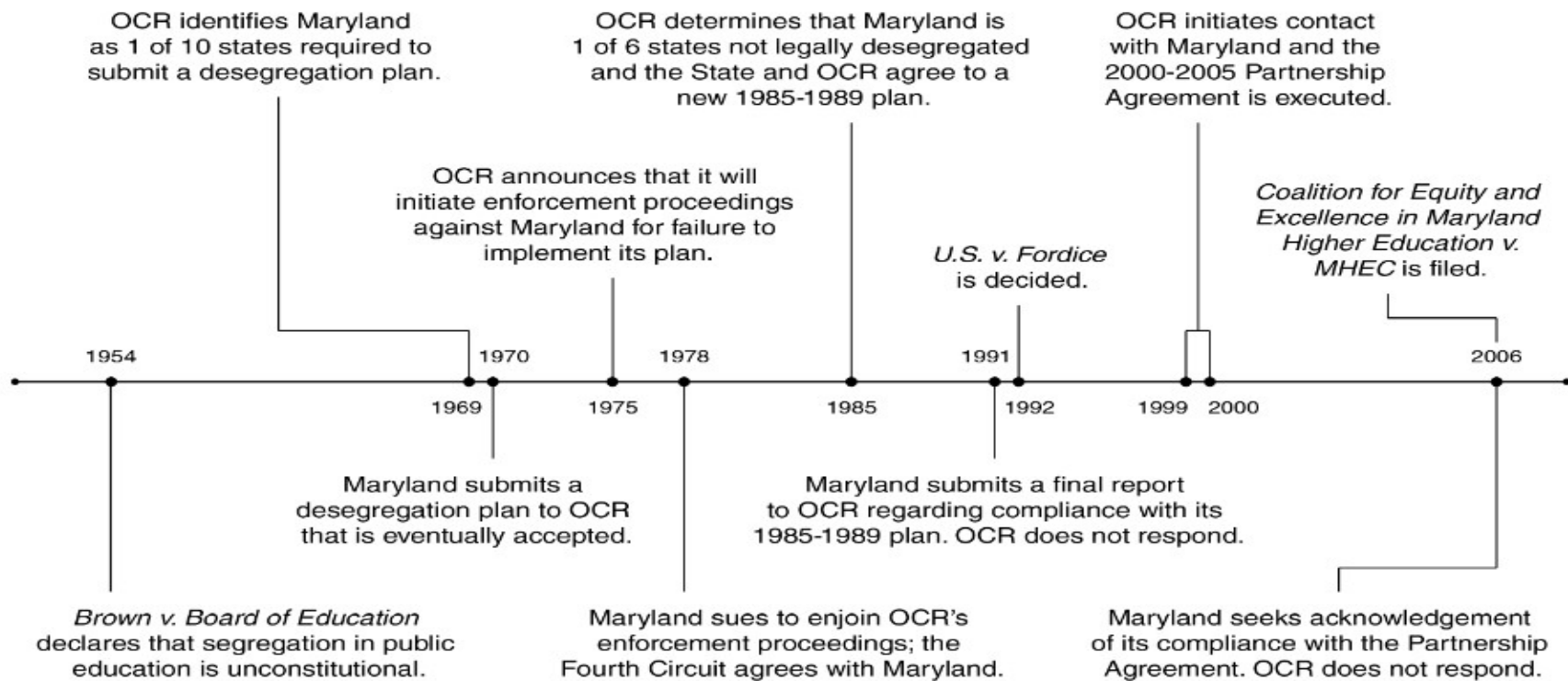
The Coalition for Equity and Excellence in Maryland Higher Education vs. Maryland Higher Education Commission lawsuit

Brief overview of:

- § History of desegregation initiatives in Maryland higher education system
- § Relevant Supreme Court cases
- § Timeline of Coalition vs. MHEC lawsuit
- § Review of Coalition vs. MHEC settlement



Timeline Between *Brown* and The Filing of the *Coalition* Lawsuit



OCR: U.S. Office for Civil Rights
MHEC: Maryland Higher Education Commission

Source: Department of Legislative Services

De Jure Segregation and U.S. Office of Civil Rights*

Brown vs. Board of Education

1954

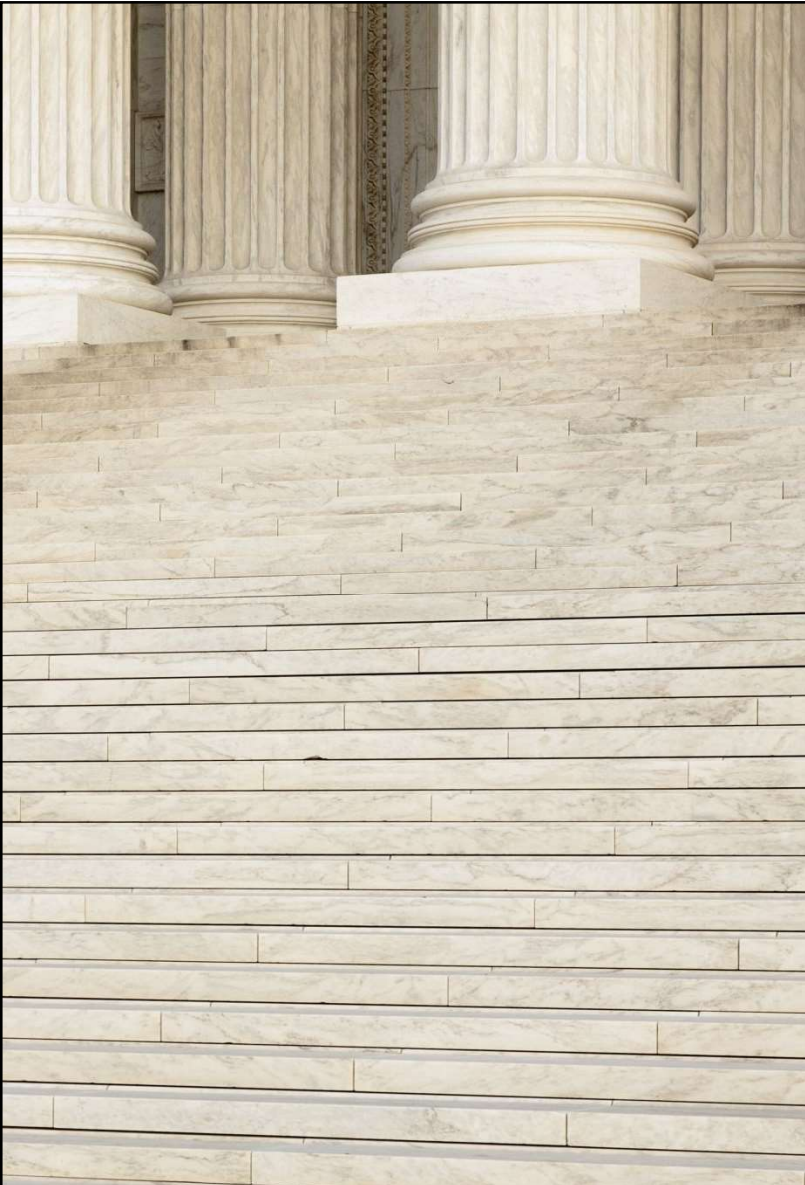
U.S. Supreme Court finds that “separate but equal” is inherently unconstitutional and a violation of the Equal Protection Clause of the 14th Amendment of the U.S. Constitution.

Maryland Higher Education System

1969

The U.S. Office for Civil Rights (OCR) finds Maryland to be 1 of 10 states that formerly operated a racially segregated system of education in violation of Title VI of the Civil Rights Act of 1964 and other federal laws.

*De jure (“as a matter of law”)



Maryland Higher Education System: Desegregation Initiatives 1969 - 2000

1969: OCR notifies Maryland that it was “operating a racially segregated system of higher education.”

1969-1991: Maryland and OCR worked together on desegregation plans, including 1974 plan and 1985 – 1989 plan

1992: *United States v. Fordice* is decided by U.S. Supreme Court. OCR announced the Office would apply the *Fordice* standard to all states with OCR-accepted desegregation plans.

2000: MHEC and OCR entered 5-year partnership agreement, under which MHEC agreed to:

- “Review, object to, and not approve programs which are unnecessarily duplicative unless there is a sound educational justification”; and
- Develop measures to ensure that HBIs are “comparable and competitive.”

2006: Maryland writes OCR seeking acknowledgement of fulfillment of partnership agreement commitments; OCR fails to respond.

United States vs. Fordice

A state's affirmative duty under the Fourteenth Amendment's Equal Protection Clause to dismantle its prior dual university system is not discharged "until it eradicates policies and practices traceable to its prior de jure dual system that continues to foster segregation."

Three-step analysis to determine whether a state has discharged its duty to dismantle a former system of *de jure* segregated education:

1

Plaintiff must show that a policy/practice is traceable to *de jure* segregation.

2

If shown, the State has the burden to prove that it has dismantled its *de jure* system and that the policies/practices do not have continuing segregative effects.

3

If the State fails to meet this burden, the State must prove that the policies/practices have sound educational justification and cannot be practicably eliminated, *i.e.*, established by less segregative means.

Maryland and OCR 5-Year Partnership Agreement (2000-2005):

Nine Commitments

Strengthen

- academic and teacher preparation programs
- partnerships with K-12 schools
- recruitment and admissions
- retention and graduation

Improve

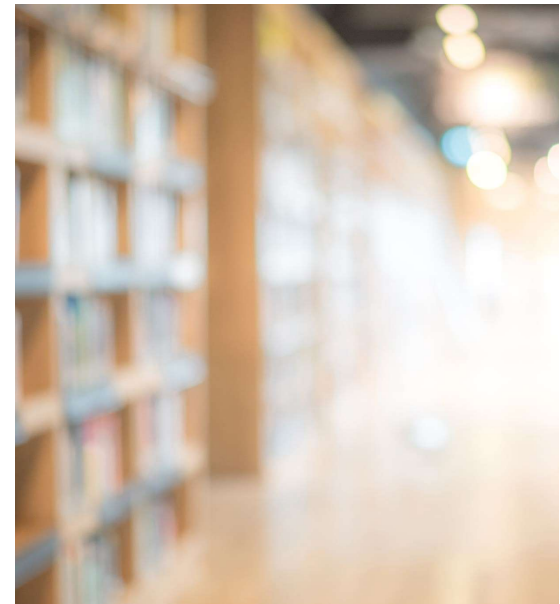
- campus climate and environment
- faculty/staff and governing/advisory board diversity
- and expand 2+2 partnerships and articulation

Other Actions

- Avoid program duplication
- Expand the uniqueness of HBCUs
- Further enhancements for HBCUs to be comparable and competitive to TWIs in all facets of their operations and programs

2005

MHEC approved a joint MBA program at Towson University and the University of Baltimore over the objection of Morgan State University which had a program operating since the 1970's.



The Coalition for Equity and Excellence in Maryland Higher Education vs. Maryland Higher Education Commission

2006: The Coalition sues MHEC in State court; case removed to federal court.

Allegations

Plaintiffs allege that throughout its history and up to the present day, Maryland has maintained a racially segregated system of higher education and has systematically and purposefully engaged in a pattern and practice of racial discrimination that has prevented HBCUs from achieving parity with their traditionally White institution (TWI) counterparts in violation of federal law, including:

- Title VI of the Civil Rights Act of 1964; and
- the Equal Protection Clause of the 14th Amendment of the U.S. Constitution, which protect against discrimination on the basis of race, color, or national origin.

Relief sought

Coalition sought equitable relief regarding the State's obligations under the 2000 OCR Partnership Agreement, *United States v. Fordice*, and any other applicable federal and State laws.

Coalition vs. MHEC

2012: Three claims proceeded to trial:



Maryland limited the HBCU's institutional missions.



Maryland limited the HBCU's operational funding.



Maryland permitted unnecessary duplication of academic programs between HBCUs and nonHBCUs.

Coalition vs. MHEC

2013: Findings in Order of Judge Blake

Unnecessary Program Duplication: Maryland has current policies and practices of unnecessary program duplication that continue to have segregative effects to which the State has not established sound educational justification.



Limited Institutional Missions: The Coalition has not proven that any current mission related policy or practice is traceable to the *de jure* era, even if missions not equal to TWIs. Ample evidence State actively worked to expand role of HBCUs since the *de jure* era and place them on equal footing with TWIs.




Limited Operational Funding: The Coalition has not proven that any current operational funding related policy or practice is traceable to the *de jure* era, even if resources not equal to TWIs. Current funding formula entirely different and has not disadvantaged or provided less funding to HBCUs relative to TWIs.

Coalition vs. MHEC


Unnecessary Program Duplication (defined in U.S. vs. Fordice)

Court finds that Maryland has current policies and practices of **unnecessary program duplication** that continue to have segregative effects to which the State has not established sound educational justification.

“Unnecessary program duplication” means the same nonessential or noncore programs at two or more institutions, specifically:

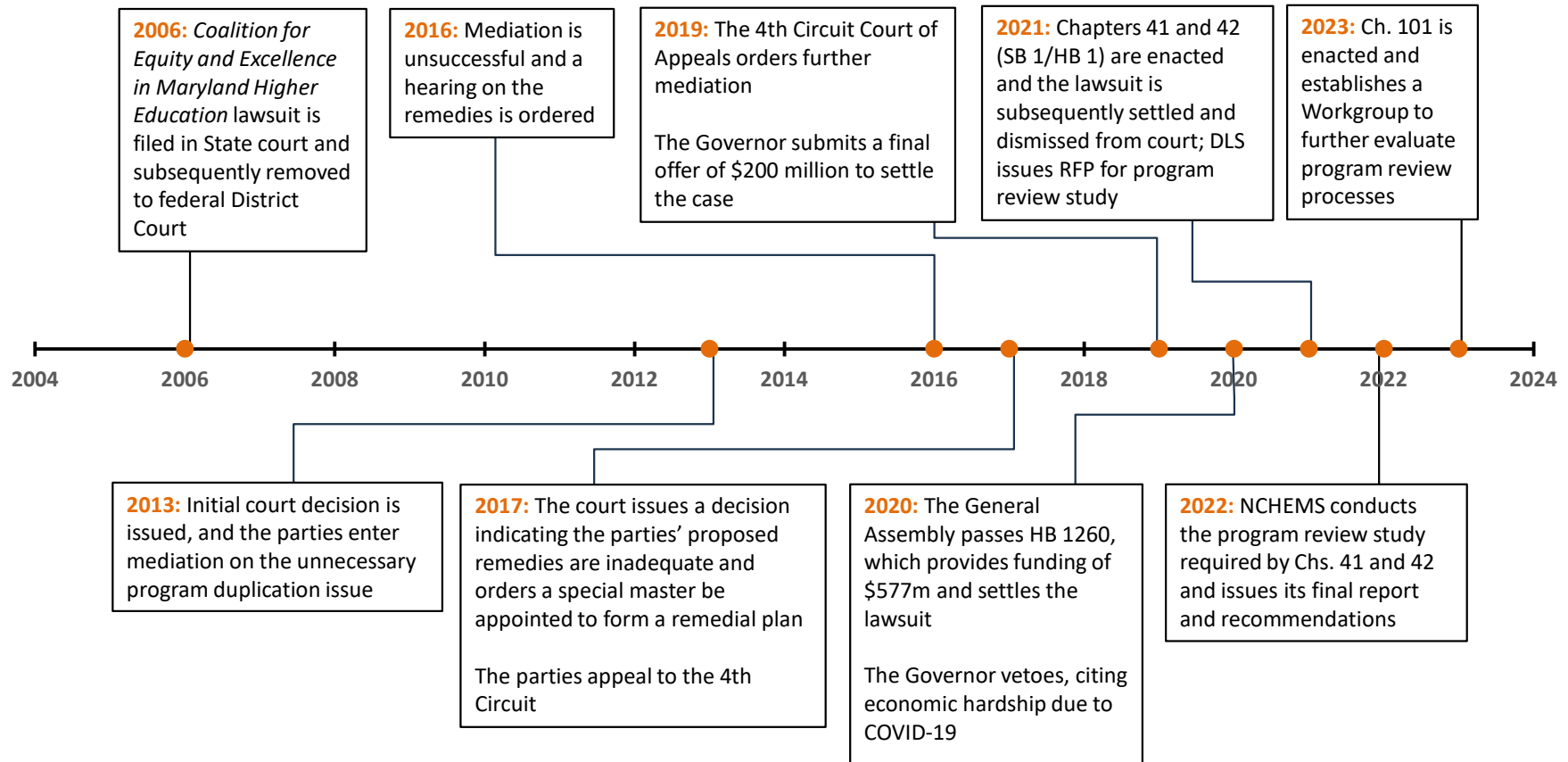


The duplication of nonbasic liberal arts and science coursework at the bachelor's level.



All duplication at the master's level and above.

Timeline of the Coalition vs. MHEC Lawsuit



Source: Department of Legislative Services

Chapters 41 and 42 of 2021
(Effective contingent on final
settlement of lawsuit)

HBCUs:
\$557 million thru 2032

MHEC:
Must establish of new academic
program evaluation unit and
funding for 10 new staff

Report:
Study of the capacity and capability
of MHEC to conduct academic
program reviews under current
policies and practices

Coalition vs. MHEC Settlement

Coalition vs. MHEC

Settlement Award: HBCUs

Monetary Award

Provides \$557 million through 2032 “to remedy the findings of the District Court.”

- Fiscal 2023 – 2023 distribution of \$577 million depends on actual enrollment. Allocation based on each HBCU’s enrollment compared to total enrollment at all HBCUs; receive a minimum of \$9 million.

➤ Funding for fiscal 2024:

- BSU: \$18.2 million
- UMES: \$9 million
- CSU: \$9 million
- MSU: \$26.4 million

Purposes

Settlement award may be used for:

- scholarships and financial aid
- faculty recruitment and development
- expanding and improving existing academic programs
- development and implementation of new academic programs
- academic support and marketing

Coalition vs. MHEC

Legal Resolution

May 2021 – Final Settlement

The district court dismissed Coalition vs. MHEC finding the State's commitments under Chapters 41 and 42 "cure any policy of unnecessary program duplication traceable to Maryland's de jure system of racially segregated public higher education."



Academic Program Review Study

CHAPTERS 41 AND 42 OF 2021 REQUIREMENTS

Academic Program Review Study

Statutory Requirements

Department of Legislative Services (DLS) contracts with National Center for Higher Education Management (NCHEMS) to study the capacity and capability of MHEC to conduct academic program reviews under current policies and practices, including:

- Evaluating policies, procedures, and processes for reviewing academic program proposals
- Evaluating relevant academic program data
- Interviewing and gathering information from constituents
- Identifying obstacles in the current process
- Summarizing academic approval policies, procedures and processes at states that have public HBCUs and have similar governance structure
- Examine MHEC's ability to evaluate workforce development needs
- Analyzing MHEC academic program review staff and recommend appropriate configuration with the addition of 10 new positions

Academic Program Review Study

NCHEMS Process and Activities

Information Gathering

- MD State law and regulations
- MHEC policies and procedures
- Agency structure and capabilities
- Other state higher education agencies

Stakeholder Input

- HBCUs
- USM and constituent institutions
- Community colleges
- Independent colleges and universities
- MHEC & Dept. of Labor
- Dept. of Legislative Svcs

Comparative State Higher Education Agencies

- Alabama
- Arkansas
- Louisiana
- Mississippi
- Ohio
- South Carolina
- Virginia
- (each have public HBCUs and governance structure similar to MD)

Major Issues of Maryland Program Approval Process

Identified by NCHEMS

The MHEC process of relying on objections from other institutions for new program proposals has created distrust among the institutions, especially the HBCUs.

MHEC has not consistently adhered to its own timelines, nor expectations for objections against a proposed program, resulting in reduced transparency and diminishing institutions' effective and efficient planning.

MHEC's insufficient consideration of an adequate supply of resources, such as availability of clinical sites, has an impact on HBCUs and other Maryland institutions.

MHEC does not have the capacity to compile and analyze the best data to project workforce needs.

The program review process is used by institutions to serve their own objectives. This results in a bottom-up approach to statewide planning; it is tactical, not strategic.

Principles Underlying NCHEMS' Recommendations



The needs of students and the state are of top priority.



Support thriving institutions, especially those that make disproportionately large contributions to equitable outcomes and innovation.



MHEC's processes and procedures must yield decisions that are transparent, predictable, timely, and based on evidence.



Stimulate collaboration among institutions.



Processes are integrated with existing structures and other important features of the postsecondary education in Maryland.



Program review and approval processes—and the results generated—are consistent with the statewide strategic plan for postsecondary education in Maryland.



Guidelines used for program review create incentives for institutions to deepen expertise within their existing missions rather than for expanding their missions.



Public institutions' operational missions that are approved by MHEC are unambiguous and not open to multiple interpretations.

Academic Program Review Study Recommendations: Agency Actions

MHEC should:

- **Improve process integration:** better integrate its planning and program review functions to make contributions to the Statewide plan a major factor in the program approval decision process.
- **Meet timelines:** adhere to published timelines established in the process for review/approval of new programs and assure the timetable is understandable to institutions.
- **Develop criteria for unnecessary duplication:** develop measurable criteria for determining when a proposed new program would be considered an unreasonable/unnecessary duplication. These criteria should be transparently and consistently applied.
- **Adjust triggers for full program review:** adjust triggers for full program review. Other states use a trigger of 50% vs MHEC 33%. Also reconsider whether new concentrations comprised entirely of courses in an existing degree programs should be subject to full review or a lesser notification requirements. MHEC should rely on professional accreditors, peer reviews, or external experts to do the analysis.
- **Online learning:** stop the practice of assuming that all institutions have adequate student support services for effective online learning, that all students have the skills and places to work online, and that the outcomes for online and on-ground students are equal at all institutions.
- **Develop criteria assessing program success:** establish criteria for assessing the success of recently approved programs and review those programs on a regular basis.
- **Build trust:** work to build trust among all the institutions but especially the HBCUs. MHEC should be intentional about utilizing the expertise and input of institutional leadership.

Academic Program Review Study

Recommendations: Policy Changes (require statutory change)

- **Operational Missions vs. Mission Statements:** MHEC's authority to approve missions needs to be clarified. MHEC should approve operational missions, not a mission statement. Operational missions express roles clearly based on institutions' array of programs, audiences served, and other special features such as an institution's status as an HBCU or Land-Grant university.
- **Incentivize Collaboration:** Higher education appropriations should be modified to 'reward' institutions that collaborate with others. MHEC should better identify programmatic areas for inter-institution collaboration by deepening its activities in identifying workforce needs. Maryland institutions are likely to need to collaborate more to assure student access to needed programs and institutional viability.
- **Institutional 3-year Plans:** MHEC should require three-year plans from institutions and review those on an on-going basis. The information about future program development should be used to identify areas for inter-institutional collaboration.
- **Rethink Program Review Process to Strengthen HBCUs:** MHEC's current usage of the program review process to address historic inequities in campus resources among the HBCUs violates several of the principles mentioned above. Using the operational mission approval and three year planning processes would be a more productive way to strengthen HBCUs and help them meet their modern goals.
- **Comments vs. Objections:** MHEC should discontinue its practice of allowing institutions to object to others' new program proposals and ask for comments instead; comments should be used to help improve the new program, not to set up barriers to innovation. Institutions should review each other's three-year plans to examine areas for potential collaboration that strengthen each collaborating institutions' program offerings and improve student access.
- **Consider Conflicts of Interest of Appointments to Commission:** Appointments to the Commission should avoid potential conflicts of interest. Institutional leaders reported that former presidents serving on the Commission displayed biases.

Questions