

## 610 CMR 13.00: Financial Assessment and Risk Monitoring of Institutions of Higher Education

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### 13.01: Scope and Purpose

610 CMR 13.00 governs the Board of Higher Education's annual assessment of independent institutions of higher education to review and monitor the financial stability and viability of said institutions, as authorized pursuant to M.G.L. c. 69, § 31B. This section also directs the Board of Higher Education's implementation of certain additional elements of M.G.L. c. 69, § 31B, including the requirement that members of the governing board of private institutions of higher education receive training and the requirement that private institutions of higher education post their annual audited financial statements on their websites.

This section does not affect the existing jurisdictional exceptions from the requirements set forth in 610 CMR 2.00 for certain in-state, independent institutions chartered prior to 1943 that are authorized by the legislature or state constitution to offer degree programs and confer post-secondary degrees in the Commonwealth. This regulation does not apply to out-of-state institutions with the power to grant degrees to Massachusetts students by virtue of participation in the State Authorization Reciprocity Agreement (SARA).

### 13.02: Definitions

As used in 610 CMR 13.00:

**Accrediting Agency.** A regional or national entity that grants formal recognition or acceptance of an institution or of programs or portions of the institution and is recognized by the U.S. Department of Education as a reliable authority concerning the quality of education or training offered by the institutions of higher education or higher education programs it accredits.

**Board of Higher Education (Board).** The agency established pursuant to the provisions of M.G.L. c. 15A, § 4.

**Commissioner of Higher Education (Commissioner).** The chief executive and administrative officer of the Department and the Board, pursuant to M.G.L. c. 15A, § 6.

**Department of Higher Education (Department).** The agency established pursuant to M.G.L. c. 15A, § 6.

**Independent Higher Education Institution (Institution).** An independent institution of higher education located in the Commonwealth and authorized to grant degrees pursuant to any general or special law.

**Risk of Imminent Closure.** A determination made by the Commissioner, based on an assessment of an Institution's financial resources, that the Institution is at risk of being unable to continue operations or substantially fulfill its obligations to enrolled and admitted students for the balance of the current and subsequent academic year, using December 1<sup>st</sup> as the annual threshold measurement date.

**Student Records.** Information and documents relating to a student's academic career and the institution's academic offerings, including, but not limited to, transcripts for students who are currently attending the institution or have attended the institution; graduation lists or other comparable academic documentation for students who have graduated from the institution; and college catalogs.

**Trustee.** A voting member of the governing body of a college or university.

### **13.03: Annual Financial Assessment**

The Department shall ensure that mandatory annual financial assessments of Institutions are conducted in accordance with the following procedures.

#### **(1) Screening**

- (a) Annual Screening. All Institutions shall be screened annually for the purpose of assessing each Institution's past, present, and future financial stability to identify any Institution potentially at Risk of Imminent Closure.
- (b) Screening Tools. The Board shall establish the procedures to be used in the screening process, after consultation with representatives of Institutions and other stakeholders, and shall periodically review and refine such procedures as needed. Said procedures may include, but are not limited to:
  - 1. The use of financial and non-financial indicators from publicly available data sources to conduct a preliminary assessment of whether the Institution may be at Risk of Imminent Closure.
  - 2. Credit ratings assigned to Institutions by credit rating agencies or services.
  - 3. Any information obtained from other regulatory, oversight, or law enforcement entities, including Accrediting Agencies, the U.S. Department of Education, and the Massachusetts Office of the Attorney General, that could allow the Department to evaluate the sufficiency of the Institution's financial resources.
- (c) Notification and Consideration of Other Information Relevant to the Screening. The Commissioner shall notify each Institution identified through the screening process as potentially at Risk of Imminent Closure under this section. The notification shall include Department staff outreach to the administration of the

Institution to provide an opportunity to review the results of the screening process, including the analytical methodology, and to submit additional information that they or the Commissioner deem relevant to the screening results, including updated data not taken into account as part of the methodology used.

**(2) Determination of Financial Status**

If the screening results, including any information provided to the Department in 610 CMR 13.03(1)(c), indicate an Institution may be at Risk of Imminent Closure, the Commissioner shall provide the Institution with a summary of the basis for his or her determination and require the Institution to submit information, in the form of a risk mitigation plan, to accurately and fairly determine the institution's financial status and likelihood of imminent closure and to monitor its condition, and prepare a contingency closure plan.

- (a) Submission of Risk Mitigation Plans. The Institution's risk mitigation plans shall, at a minimum, inform the Board of any known liabilities, risks, or financial issues and outline the Institution's plans, initiatives, and goals to sustain operations and to substantiate its current and prospective resources and financial capacity to address the Risk of Imminent Closure.

The Commissioner's request for risk mitigation plans shall be addressed to the chief executive officer of the Institution and shall direct the Institution to work with Department staff. Copies of the Commissioner's request shall be sent to the chair and vice chair(s) of the Institution's governing board.

As part of the Institution's risk mitigation plans, the Institution's chief executive officer and the chair of the Institution's governing board shall provide written assurances and certifications which, at a minimum, shall certify the accuracy and completeness of the Institution's risk mitigation submission, and certify the Institution's intention and ability to continue operations and substantially fulfill its obligations to enrolled and admitted students. Additional content and the format of the required assurances and certifications shall be determined by the Commissioner.

- (b) Review and Evaluation of Risk Mitigation Plans. Department staff shall review the Institution's risk mitigation plans and evaluate the Institution's Risk of Imminent Closure. The Commissioner shall, after Department staff review, make one the following determinations:
  1. if the risk mitigation plans are deemed satisfactory, such that the Institution is deemed no longer at Risk of Imminent Closure, the Department shall monitor the implementation of the plans as set forth in 610 CMR 13.03(3); or

2. if the Institution does not submit the requested risk mitigation plans, or if the submitted plans do not demonstrate a likelihood that Risk of Imminent Closure will be mitigated during the current and subsequent academic year, the Commissioner shall require continued contingency planning for closure and, after notice to the Institution and an opportunity to cure, notification to the public, as set forth in 610 CMR 13.04 and/or may impose sanctions as outlined in 610 CMR 13.07.

### **(3) Monitoring**

Department staff shall monitor the Institution's progress in implementing its risk mitigation plans and initiatives and meeting its goals. Monitoring shall continue until the Department determines that: (i) the concerns identified have been satisfactorily resolved, such that the Institution has sufficiently mitigated the Risk of Imminent Closure; or (ii) the Institution's plans to address the Department's concerns, as originally presented or subsequently amended, have not resulted and are unlikely to result in a satisfactory resolution.

Department staff may require periodic and other reports as part of the monitoring process.

## **13.04: Contingency Planning for Closure and Notification to the Public**

- (1) **Contingency Planning for Closure.** All contingency closure plans required by the Commissioner from an Institution shall be submitted by the Institution to Department staff in a format prescribed by the Department. While the development of contingency closure plans is typically an iterative process, all complete contingency closure plans must, in addition to any elements required by M.G.L. Chapter 69, Section 31B, include the development of transfer and articulation agreements for students, provide a comprehensive budget which shows the existence and commitment of sufficient resources to sustain the Institution's educational offerings through closure, and consider the broader impacts of closure on the Institution's key constituencies, including faculty, staff, and the host community.

- (a) An Institution required to submit a contingency closure plan to the Department must also, as part of its risk mitigation plan submission, include the following:

1. A Student Deposit Refund Plan that assures the refund of any deposits made by students in anticipation of enrolling or continuing their enrollment at the Institution, in the event that the Institution closes before students have received the entirety of the educational services for which their deposits were to be applied; and
2. A Student Records Maintenance Plan to cover the cost of protecting and maintaining all Student Records from at least the past 60 years, including ensuring that Student Records are in a digitized,

accessible, indexed, searchable, and readily convertible, portable format. The plan must encompass all Student Records held by the Institution, including those from other, closed Institutions for which the Institution serves as custodian.

(b) **Bond Requirements.** An Institution that does not demonstrate sufficient, documented resources in its Student Deposit Refund Plan and Student Records Maintenance Plan to meet the costs of making the required refunds and maintaining the Student Records must, as required by M.G.L. c. 69, s. 31B(3), include the furnishing of a bond with surety or a letter of credit sufficient to meet the costs of so refunding and maintaining. The bond or letter of credit must be maintained for a period of no less than 18 months, issued by a bank as defined in M.G.L. c 167, s. 1 or an insurance company as defined in M.G.L. c. 175, s. 1, payable to the Board, in which the Commonwealth is designated as the beneficiary where required. The bond or letter of credit shall be procured only from entities legally authorized to conduct business in the Commonwealth.

1. The amount of the bond or letter of credit shall be calculated by the Institution using a formula determined by the Department and based on criteria that may include: average net revenue from student tuition and fee charges; average net revenue from room and board charges to students; current and projected enrollment; enrollment trends, including the average number of currently enrolled and anticipated new students and the required admissions deposit for new students; and the estimated cost of formatting, scanning, and placing Student Records held by the institution with a Department-approved repository. The Department must approve the Institution's calculation.
2. The surety on any bond or letter of credit may cancel the bond upon giving no less than 60 days' notice in writing to the Department and thereafter shall be relieved of the liability for any breach of condition occurring after the effective date of the cancellation. If the surety is cancelled, the Institution shall procure new surety no less than 30 days prior to the effective cancellation date.
3. Any funds received from a collection on a bond or letter of credit shall be held in trust by the Department for the benefit of enrolled or deposited students of an Institution and the preservation and maintenance of an Institution's Student Records.

(2) **Notification.** An Institution required to post public notification based on a determination made by the Commissioner under section 13.03(2)(b)(2) shall inform enrolled students, accepted students, pending applicants, faculty, staff, and other relevant stakeholders, including the chief executive officer of the host community, the elected state representative and senator in the legislative district where the Institution is located, the

Secretary of Housing and Economic Development, and the Secretary of Labor and Workforce Development, that the Department has determined the Institution's financial stability is sufficiently uncertain such that the Department cannot confirm that the Institution will be able to sustain operations or substantially fulfill its obligations to enrolled and admitted students for both the current and the subsequent academic year. The communications shall be made in a manner, format, and timing acceptable to the Department. The Institution shall also include clear and conspicuous notice in any promotional materials aimed at recruiting or retaining students. Should the Institution decline to inform stakeholders that it is at risk, the Commissioner may issue a public notification to that same effect.

- (3) The Department shall maintain a public list of Institutions currently required to issue notifications pursuant to this section.
- (4) Institutions required to submit contingency closure plans to the Department continue to be subject to the requirements set forth in 610 CMR 13.03(2) and (3), either until a determination is made by the Department that the concerns identified have been satisfactorily resolved, such that the Institution has sufficiently mitigated the Risk of Imminent Closure or until the Institution is closed.

### **13.05: Advisory Committee**

The Commissioner may convene an ad hoc or standing advisory committee to participate in the review of an Institution during any stage of the process. The Commissioner shall charge the advisory committee with the scope and purpose of its review, and the advisory committee shall, upon the Commissioner's request, submit an evaluation with its findings and recommendations to the Commissioner.

An Institution may request that an advisory committee be convened, if one has not already been convened by the Commissioner, in the event that the Commissioner has determined that the Institution will be required to submit a Contingency Plan for Closure and a Notification to the Public. An Institution's request for advisory committee review shall be in writing and shall be submitted to the Commissioner within 3 business days of the Commissioner's determination. The Commissioner's assent to such a request shall not be unreasonably withheld.

### **13.06: Confidentiality**

Unless otherwise specified above, the Board and the Department shall protect from disclosure and shall maintain as confidential all information submitted to or developed by the Board, acting by or through the Commissioner, the Department, or the Advisory Committee, pursuant to and in furtherance of this regulation, to the maximum extent permissible under state law.

### **13.07: Trustee Training**

Each Trustee of an Institution shall receive instruction and training in higher education financial metrics, legal and fiduciary responsibilities, and applicable standards for accreditation at least once every 4 years, as required pursuant to M.G.L. c. 69, §31B(e).

- (1) Each newly appointed Trustee of an Institution must be trained within 12 months of appointment.
- (2) Each Institution must arrange for instruction and trainings for that Institution's trustees.
- (3) As part of the annual reporting required by Section 13.09 below, an Institution must submit to the Department, at a minimum, the agenda and/or curriculum for instruction and training attended by its Trustees for the purpose of allowing the Department to evaluate its sufficiency and compliance with statutory requirements.

### **13.08: Audited Financial Statements**

An Institution must post on its website a copy of the Institution's annual financial report or audited financial statement and a summary of the report, however termed, that is written in terms that are understandable by the general public.

- (1) An Institution must post its audited financial statements no later than 6 months after the end of its fiscal year.
- (2) An Institution must, at a minimum, maintain on its website its 3 most recent years of audited financial statements.
- (3) An Institution must have a permanent webpage for the posting of the audited financial statements that is accessible to the public and able to be located using either the website's internal search function or an external internet search engine.
- (4) An Institution must also post to its permanent webpage an accompanying summary of each year's audited financial statement in a format understandable by the general public.

### **13.09: Reporting**

An Institution must report annually to the Department on its compliance with the requirements in these regulations and in M.G.L. c. 69, s. 31B. The timeline and format for posting and updating the Institution's annual report shall be determined by the Department through policy.

### **13:10: Sanctions**

If an Institution fails to comply with the requirements of this regulation, or otherwise fails to cooperate with the Department in the screening, inquiry, monitoring, and/or contingency planning and notification processes, including failure to obtain the required bond with surety or

letter of credit, or otherwise fails to submit risk mitigation plans that demonstrate a likelihood that the Risk of Imminent Closure will be mitigated during the current or subsequent academic year, the Commissioner may issue one or more of the following sanctions:

- (1) Termination of eligibility for state aid.
- (2) Suspension or revocation of degree-granting authority, in whole or in part, after notice and opportunity to cure through the development of a corrective course of action, through the process described in 610 CMR 2.10(2).
- (3) Referral by Department staff to the Office of the Attorney General.
- (4) A fine not to exceed \$1,000 per day, in an amount to be determined by the Commissioner in their sole discretion.

### **13.11: Appeals**

- (1) A decision by the Board, upon the recommendation of the Commissioner, to suspend or revoke the Institution's degree-granting authority is appealable pursuant to M.G.L. c. 30A, as set forth in M.G.L. c. 69, s. 30A and 610 CMR 2.10(2).
- (2) A decision by the Commissioner to issue a fine as set forth in 610 CMR 13.10(4) can be appealed within 10 business days by submitting a written appeal to the Executive Committee of the Board. Within 10 business days of its receipt of the written appeal, the Executive Committee will hold a session to receive information and hear testimony from the Institution, the Commissioner, and Department staff. The Executive Committee will seek to issue a final decision on the Institution's appeal within 10 business days of its session.
- (3) The Executive Committee of the Board's final decision on the issuance of a fine, as set forth in 610 CMR 13.11(2), is appealable pursuant to M.G.L. c. 249, s. 4.

#### **REGULATORY AUTHORITY**

610 CMR 13.00: M.G.L. c. 15A, § 16; M.G.L. c. 69, § 30A; and M.G.L. c 69, § 31A and 31B, as amended by 2019 Mass. Acts c. 113.