

BOARD OF HIGHER EDUCATION
REQUEST FOR COMMITTEE AND BOARD ACTION

NO.: BHE 19-06

BOARD DATE: June 18, 2019

**AUTHORIZATION FOR COMMISSIONER TO SOLICIT PUBLIC COMMENT ON 610
CMR 13.00: FINANCIAL REVIEW AND RISK MONITORING OF INSTITUTIONS OF
HIGHER EDUCATION**

MOVED: The Board of Higher Education hereby authorizes the Commissioner to proceed in accordance with the Administrative Procedure Act, M.G.L. c. 30A, § 3, and solicit public comment on the proposed regulation 610 CMR 13.00: Financial Review and Risk Monitoring of Institutions of Higher Education.

VOTED: Motion adopted by the BHE 06/18/2019

Authority: M.G.L. c. 69, §§ 16, 30A, 31A
M.G.L. c. 30A, § 3; 950 CMR 20.00

Contact: Carlos E. Santiago, Commissioner
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Massachusetts Board of Higher Education

Proposed New Regulations for the Financial Review and Risk Monitoring of Private Higher Education Institutions

Background

At its January 22, 2019 meeting, the Board of Higher Education (Board) voted (BHE 19-04) to receive the report of the Transitions in Higher Education: Safeguarding the Interests of Students (THESIS) Working Group, and directed the Commissioner to advance the recommendations as outlined in the report, with target implementation for academic year 2019-2020. The Board further directed the Commissioner to return to the Board, after engaging in informal stakeholder vetting, with implementation recommendations.

Consistent with the Board's request, the Commissioner and members of his staff have engaged in several informal discussions with interested stakeholders to discuss the purpose and intent of the THESIS recommendations, and the anticipated content of regulations and policies that would advance those recommendations. The Commissioner's and Department staff's outreach has included conversations with Presidents and Chief Financial Officers of private higher education institutions, members of the legislature, representatives from the New England Commission of Higher Education (NECHE), staff affiliated with other state agencies (e.g., Executive Office of Education, Attorney General's Office), and representatives from the Association of Independent Colleges and Universities of Massachusetts (AICUM).

Having reviewed the THESIS recommendations and having concluded the informal stakeholder vetting process, the Commissioner recommends the promulgation of regulations that will govern the Department's screening, monitoring, and review of Massachusetts private higher education institutions for financial stability and risk of imminent closure. (*See Attachment A, 610 CMR 13.00*). The proposed regulations apply to all Massachusetts-based, private higher education institutions that are authorized by the Board to grant degrees in the Commonwealth and/or are authorized to participate in the state's financial aid program.

The proposed regulations establish standards and processes to permit the Board (acting by and through the Commissioner and Department staff) to:

- identify, through a screening process, private higher education institutions experiencing significant financial distress, placing them at risk of imminent closure;
- monitor said institutions while they either improve their financial condition or transition to closure; and
- allow for contingency closure planning and timely public notification in the event of imminent closure.

Through this new screening, monitoring, and contingency-planning regulatory process, it is anticipated that the Board and the Department will be able to more accurately identify and timely respond to imminent institutional closures than is possible under the current regulatory structure. Allowing the Department the ability to conduct these screenings and inquiries will help ensure that institutions identified as “at risk of imminent closure” are fully aware of and focused on this risk and, if improvement is not possible, will help apprise the public of an institution’s risk of imminent closure so that prospective and current students and employees can make informed decisions in furtherance of their best educational and financial interests. The proposed regulations also provide the Commissioner with the option of sanctioning an institution that does not cooperate in the screening or monitoring process, or otherwise does not prepare a mitigation plan that is likely to minimize the risks of the institution’s imminent closure, by terminating that institution’s eligibility for state aid.

As set forth in the Timeline below, after approval by the Board, the regulations will be submitted to the Secretary of the Commonwealth’s Office by June 28, 2019, in time for publication in the next available Massachusetts Register. Although a minimum of one public hearing is typically mandated, the Department anticipates holding two to three public hearings on the proposed regulations, and will offer a 4 week public comment period.

Upon the conclusion of the public comment period, the Department will make any necessary changes to the regulations and will bring the final regulations to the Board for approval and promulgation; at that time, the Department will also present the Board with associated policies that may be necessary for implementation. A special meeting of the Board in mid-to-late August (August 19th) is recommended, so as to assure that the regulations are effective for implementation in September. (See Timeline, below).

Staff Recommendation

Staff recommend that the Board approve 610 CMR 13.00 as attached to be submitted to the Secretary of the Commonwealth’s Office for publication in the Massachusetts Register, which will initiate the presentment of the proposed regulations to the public for comment in accordance with the attached Timeline.

Comment Period and Regulatory Compliance Timeline

DATE	TASK/OCCURENCE
June 28, 2019	<ul style="list-style-type: none"> • Draft regulations, small business impact/fiscal effect statements, and notice of public hearing will be brought to the Secretary of the Commonwealth’s Office for publication in next edition of the Massachusetts Register (July 12, 2019) • Letters will be sent to DHCD/MMA per E.O. 145
July 8, 2019	<ul style="list-style-type: none"> • Notices of public hearing will be sent to the Boston Globe for publication (publication in the Globe is likely to occur 2-3 days after submission)
July 12, 2019	<ul style="list-style-type: none"> • Publication of draft regulations and notices of public hearing in the Massachusetts Register
July 12, 2019 – August 9, 2019	<ul style="list-style-type: none"> • Public comment period • At least two public hearings will be held at different locations across the Commonwealth
Week of August 12, 2019	<ul style="list-style-type: none"> • Final regulations distributed to BHE for review
August 19, 2019	<ul style="list-style-type: none"> • Special BHE meeting (final regulations presented for approval, along with associated policies)
August 22, 2019	<ul style="list-style-type: none"> • Submit final small business impact statement to Secretary of the Commonwealth’s Office.
August 23, 2019	<ul style="list-style-type: none"> • Submit final regulations to Secretary of the Commonwealth’s Office for publication in the next edition of the Massachusetts Register (September 6, 2019)
September 6, 2019	<ul style="list-style-type: none"> • Publication of the final Regulations in the Massachusetts Register • Regulations will be final