

**BOARD OF HIGHER EDUCATION**

**REQUEST FOR BOARD ACTION**

**NO.:** BHE 23-12

**BOARD DATE:** October 18, 2022

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**APPROVAL AND ADOPTION OF REGULATORY AMENDMENTS TO 610 CMR 13.00:  
FINANCIAL REVIEW AND RISK MONITORING OF INSTITUTIONS OF HIGHER EDUCATION,  
AND RECEIPT AND ENDORSEMENT OF IMPLEMENTATION PROCEDURES**

**MOVED:** The Board of Higher Education (BHE), having solicited and reviewed public comment in accordance with the Administrative Procedure Act, M.G.L. c. 30A, § 3, hereby adopts the attached amended regulations 610 CMR 13.00: Financial Assessment and Risk Monitoring of Institutions of Higher Education (Attachment A).

Further, the Board of Higher Education (BHE) hereby receives the attached procedures (Attachment B) implementing the surety requirements of 610 CMR 13.04(1)(b), endorses the proposed approach, and authorizes the Commissioner to move forward as outlined in the document.

**VOTED:** Motion approved and advanced to the full BHE by the Executive Committee on 10/11/2022; and adopted by the BHE on 10/18/2022.

**Authority:** M.G.L. c. 69, §§ 16, 30A, and 31A; 610 CMR 13;  
M.G.L. c. 30A, § 3; 950 CMR 20.00

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## Massachusetts Board of Higher Education

### Proposed Regulatory Amendments to 610 CMR 13.00: Financial Review and Risk Monitoring of Private Higher Education Institutions

#### Background

##### I. Proposed Regulatory Amendments

At its June 21, 2022 meeting, the Board of Higher Education (BHE or Board) voted (BHE 22-63) to authorize the Commissioner to solicit public comment on proposed amendments to existing regulations that govern the Department of Higher Education's (DHE or Department) screening, monitoring, and review of Massachusetts private higher education institutions for financial stability and risk of imminent closure.

The proposed amendments, when fully promulgated, will complete the Board's implementation of [Chapter 113 of the Acts of 2019](#). Although the Board's original regulations promulgated in 2020 implemented the vast majority of the new law, implementation of some sections was deferred in order to prioritize immediate implementation of the screening cycle. Since then, the Department has effectively implemented the 2020 regulations through two screening cycles thus far. Through this new screening, monitoring and contingency closure planning process, the BHE and the DHE have been able to more accurately identify and timely respond to imminent risks of institutional closure than previously possible under the prior regulatory structure, while also identifying areas for regulatory clarification or enhancement. These final regulations implement the two remaining sections of the law related to an institution's obligation to post surety bonds and the Department's ability to levy fines for legal non-compliance.

As referenced above, the proposed amendments seek to establish the criteria for implementing the following two unique, substantive sections of the new law: an institution's obligation to furnish a bond with surety or a letter of credit sufficient to meet the costs of refunding deposits made by students in anticipation of enrolling or continuing their enrollment at the institution and for the cost of protecting and maintaining student records (M.G.L. c. 69 § 31B(b)(3)); and the Department's ability to levy fines on institutions for legal non-compliances, including the institutions' attendant appeal rights (M.G.L. c. 69 § 31B(c)).

In addition, for the purpose of increasing clarity, the proposed amendments also seek to codify into regulation the following existing practices and procedures implemented by the Department:

- the Department's reporting procedures pursuant to which institutions confirm compliance with the statutory requirement that each member of an institution's governing board receiving training in higher education financial metrics, legal and fiduciary responsibilities, and applicable standards for accreditation at least once every 4 years (M.G.L. c. 69 § 31B(e));

- the Department’s reporting procedures pursuant to which each institution posts on its website a copy of its annual financial report or audited financial statement and a summary of the report in terms understandable by the general public (M.G.L. c. 69 § 31B(f));
- an attestation procedure, through which institutions identified as at risk of imminent closure certify, as part of their risk mitigation plans to the Department, the completeness and accuracy of the materials submitted to the Department for the Commissioner’s review, along with their ability and intention to continue operations and substantially fulfill its obligations to enrolled and admitted students, as identified in their risk mitigation plans.

Finally, the proposed amendments also include technical edits and improvements to clarify language and help institutions understand processes and definitional terms, such as the definition of student records required to be maintained through a contingency closure plan.

The proposed amended regulations are attached, substantially unchanged from the version approved by the Board at its June 21, 2022 meeting. The attached includes minor stylistic amendments made by the Regulations Division within Secretary of the Commonwealth’s Office, and Staff amendments made in response to clarify meaning. (See Attachment A, 610 CMR 13.00).

#### A. Summary of Public Comments Received

On July 8, 2022, the proposed amended regulations were submitted to the Secretary of the Commonwealth’s office to be put out for public comment. The Department elected to hold one virtual public hearing at the close of the public comment period.

On July 22, 2022, notice of the public comment period and virtual public hearing on the proposed amended regulations was published in the *Massachusetts Register* (the Secretary of the Commonwealth’s official regulatory publication) and in the *Boston Globe*. The public comment period also commenced the same day. The virtual public hearing was held via Zoom on August 12, 2022, the last day of the public comment period.

During the public comment period, the Department received two written comments. At the virtual public hearing, the Department received zero comments. No additional written comments were submitted to the Department after the close of the public comment period.

Of the two written comments received, one expressed general support and appreciation for the Board’s proposed amended regulations. The other comment requested clarification regarding the Department’s approach in determining whether to assess possible sanctions pursuant to 610 CMR 13.10 where an institution has demonstrated good-faith efforts to comply with 610 CMR 13.07 (trustee completion of training requirements) and 610 CMR 13.08 (posting of audited financial statements).

Since it is not the intention of the Board or Department to, pursuant to 610 CMR 13.10, sanction an institution capable of demonstrating good-faith efforts to comply with 610 CMR 13.00 *et seq.*,

no changes to the proposed amended regulations are necessary at this time. The Department can specify its intention to take into account an institution's good-faith efforts to comply in its implementation procedures.

**B. Changes to Regulations**

As a result of the public comment received, the Department has not changed the proposed amended regulations since the Board first approved the regulations at its June 21, 2022 meeting. The unchanged regulations to be promulgated are attached (**Attachment A**).

**C. Timeline**

As set forth in the Timeline on the next page, after approval by the Board, the regulations will be submitted to the Secretary of the Commonwealth's Office by October 28, 2022, in time for publication in the next available *Massachusetts Register* (November 11, 2022). Once published in the *Massachusetts Register* on November 11, 2022, the amended regulations will go into effect.

**II. Implementation Procedures- Surety Worksheet**

State law requires that an institution of higher education that may be at risk of imminent closure, as determined by the Board pursuant to M.G.L. c. 69, § 31B and 610 CMR 13.00, must prepare a contingency plan for closure that assures the refund of deposits made by students in anticipation of enrolling or continuing their enrollment at the institution and for the cost of protecting and maintaining student records. M.G.L. c. 69, § 31B(b)(3)(v). As part of that contingency closure plan, the institution shall furnish a bond with surety or a letter of credit sufficient to meet the costs of so refunding or maintaining in accordance with criteria established by the Board. Id. The amended regulations approved by the Board on June 21, 2022 set forth minimum criteria at 610 CMR 13.04(1)(b)(1) and delegate to the Commissioner (the Department) the authority to develop a formula to calculate the required amount necessary for such bonds or letters of credit to meet the costs of refunding students and maintaining student records.

Department staff have finalized the formula's methodology and developed detailed instructions for institutions' use when calculating the required surety amount. The formula's methodology, calculation instructions, and implementation procedures are provided in the attached Surety Worksheet (Attachment B). In developing the Surety Worksheet, Department Staff informally vetted the worksheet with stakeholders and incorporated their feedback to ensure the calculated amount is sufficient to meet the requirements under M.G.L. c. 69, § 31B(b)(3)(v).

The Commissioner is presenting the proposed Surety Worksheet (Attachment B) to the BHE for information and comment. The procedures outlined in the Surety Worksheet will guide the

Department's implementation of 610 CMR 13.4(1)(b)(1) and will be periodically reviewed and updated as needed by the Commissioner to ensure consistency with statutory and regulatory intent and requirements.

**Staff Recommendations**

Having completed the required Chapter 30A process, and there being no revisions made to the Board's proposed amended regulations approved at its June 21, 2022 meeting, staff recommend the Board approve the amended regulations (**Attachment A**) for submission to the Secretary of the Commonwealth's Office and final promulgation in accordance with M.G.L. c. 30A.

Staff further request the BHE's review, comment on and endorsement of the proposed implementation procedures.

### Comment Period and Regulatory Compliance Timeline

DATE	TASK/OCCURENCE
October 18, 2022*	<ul style="list-style-type: none"><li>• <b>BHE meeting</b> (final regulations presented for approval)</li></ul>
October 27, 2022	<ul style="list-style-type: none"><li>• Last day to submit final small business impact statement to Secretary of the Commonwealth's Office.</li></ul>
October 28, 2022	<ul style="list-style-type: none"><li>• Last day to submit final regulations to Secretary of the Commonwealth's Office for publication in the next edition of the <i>Massachusetts Register</i> (November 11, 2022)</li></ul>
November 11, 2022	<ul style="list-style-type: none"><li>• Publication of the final Regulations in the <i>Massachusetts Register</i></li><li>• Regulations will be final</li></ul>