

STATEMENTS OF FISCAL EFFECT AND SMALL BUSINESS IMPACT

The Board of Higher Education seeks to enact the final regulation: 610 CMR 15.00: Massachusetts Inclusive Postsecondary Education Initiative Program Guidelines.

In July of 2022, via the FY2023 General Appropriations Act, legislation was enacted in Massachusetts to expand post-secondary educational and experiential opportunities for students with severe disabilities who were unable to achieve a competency determination under section 1D of chapter 69 (*e.g.*, pass MCAS). The legislation both codified the then-existing Massachusetts Inclusive Concurrent Enrollment Initiative (MAICEI) that had been funded in prior appropriation line items to provide such opportunities to individuals between the ages of 18 and 22 (M.G.L. c. 71B, §17); and also established a foundation for expanding access to postsecondary education opportunities for individuals over the age of 22 by requiring each public institution of higher education in Massachusetts to establish policies and guidelines governing the selection and participation of 22 and over eligible individuals with severe disabilities. The legislation has several components, including amending the Department of Higher Education's (DHE) enabling legislation (M.G.L. c. 15A, Section 30A), creating a trust fund (M.G.L. c. 29, Section 2VVVVV), and codifying a grant program (M.G.L. c. 71B, section 17) to help fund, support, and administer the collective programs.

In turn, the legislature charged DHE with promulgating regulations to implement the new law and, more specifically, the associated grant program which facilitates student access and is referenced in section 17 of chapter 71B. DHE's final regulation seeks to establish minimum guidelines, expectations, and procedures to help public higher education institutions offer inclusive education programming safely and appropriately to eligible students with severe disabilities and help strengthen partnerships with other state agencies. Specifically, the final regulation:

- establishes nomenclature for the new program, by instituting "Massachusetts Inclusive Postsecondary Education Initiative" (MAIPSE) as an umbrella term for both the previously existing and newly codified "MAICEI Programs" (students aged 18 years up to the age of 22 years) and "Post-MAICEI Programs" (students aged 22 years and over), which collectively refer to a comprehensive model of services designed to support individuals with severe intellectual disabilities, severe autism spectrum disorder, and severe developmental disabilities;
- defines minimum expectations for MAIPSE programs at public institutions of higher education (IHEs), such as by requiring each IHE to develop guidelines governing student selection criteria, institutional administrative capacity, course selection, residential housing, and student conduct;
- provides minimum expectations for an "Individual Student-Centered Participation Plan (ISCPP)", an umbrella term to describe the written plan(s) that are developed in alignment with 610 CMR 15.05 by DDS, MassAbility, or any other relevant state agency that serves individuals with Severe Disabilities and supports participation of a student aged twenty-two (22) years or over in a Public Institution's Post-MAICEI program; and

- addresses annual, legislatively mandated institutional reporting requirements.

Fiscal Effect on the Public and Private Sectors

M.G.L. c. 30A provides that, before any regulation can become effective, agencies of the Commonwealth must file an estimate of its fiscal effect on both the public and private sectors for the first and second years and a projection for the first five years; or state that there is no fiscal effect (if that is the case). According to the Secretary of the Commonwealth's Office, this requirement is not the cost/benefit analysis that accompanies federal regulations, but rather the agency's best judgment of the "out of pocket" expenses that will be incurred in complying with the regulation.

Public Sector

The Board anticipates that public institutions of higher education will face incidental costs related to their compliance with the regulation's requirements for annual reporting, minimum administrative capacities, and certifications. The grant program that is the subject of the final regulation, however, is intended to cover the costs of these administrative capacities. Moreover, the Board strongly believes that any fiscal effects associated with this final regulation are justified and outweighed by the benefits, including expanded access to public higher education and increased work-readiness among this particular demographic of students. There is no cognizable cost to Massachusetts consumers and no loss of opportunity or benefit.

Private Sector

The Board does not anticipate any fiscal effect on the private sector, as the final regulation applies only to the Commonwealth's twenty-eight (28) public institutions of higher education. It does not extend to, nor does it place any regulatory burden upon, any private/independent colleges and universities located in the Commonwealth of Massachusetts.

Small Business Impact

In addition, M.G.L. c. 30A provides that before any regulation becomes effective, agencies of the Commonwealth must file with the Secretary of the Commonwealth a statement considering the impact of said regulation on small businesses. Such statement of consideration shall include, but not be limited to, an estimate of the number of small businesses subject to the final regulation; projected reporting, recordkeeping, and other administrative costs required for compliance with the final regulation; the appropriateness of performance standards versus design standards; an identification of relevant regulations of the promulgating agency, or any other state agency, which may duplicate or conflict with the final regulation; and an analysis of whether the final regulation is likely to deter or encourage the formation of new businesses in the Commonwealth.

An estimate of the number of small businesses subject to the final regulation

This final regulation will apply only to the twenty-eight (28) Massachusetts public institutions of higher education that offer undergraduate programming, and will not extend to, nor place any regulatory burden upon, any private independent institutions or other entities

operating in the Commonwealth. Public higher education institutions do not fall under the definition of “small businesses” as established by the U.S. Small Business Administration in 13 CFR section 12.201.

Projected reporting, recordkeeping, and other administrative costs

The Board anticipates that the Department of Higher Education will experience incidental administrative costs related to collecting and reviewing annual institutional reports regarding MAIPSE programming, as well as administrative costs of otherwise ensuring public institutions’ compliance with the requirements of M.G.L. c. 15A, s. 30A. The Board further anticipates that the twenty-eight public higher education institutions to which the final regulation applies will experience incidental administrative costs related to their compliance with the final regulation’s annual reporting requirement, minimum administrative capacities and certifications. The grant program that is the subject of the final regulation, however, is intended to cover the costs of these administrative capacities.

Appropriateness of performance standards versus design standards

Performance standards are appropriate for the final regulation to establish minimum criteria for public higher educational institutions’ participation in the MAIPSE Program. Design standards are also appropriate for this final regulation to establish procedures by which institutions can establish and maintain eligibility for MAIPSE grant funding, while maintaining a sense of predictability and consistency among all twenty-eight public campuses.

Identification of duplicate or conflicting regulations

The Board has not identified any duplicate or conflicting regulations promulgated by any state agency.

Analysis of whether the final regulation is likely to deter or encourage the formation of new businesses in the Commonwealth

The final regulation is unlikely to have an impact on the competitive environment in Massachusetts or the economy at large due to its limited scope. The final regulation applies only to Massachusetts public institutions of higher education to offer inclusive undergraduate programming for students with severe disabilities and set forth minimum expectations on how such institutions can access grant funding to support program implementation. As such, the final regulation does not extend to, nor does it place regulatory burden upon, any private/independent colleges and universities located in the Commonwealth of Massachusetts.