

**BOARD OF HIGHER EDUCATION**

**REQUEST FOR BOARD ACTION**

**NO.:** BHE 20-09

**BOARD DATE:** April 08, 2020

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**RECEIPT OF IMPLEMENTATION PROCEDURES FOR FINANCIAL ASSESSMENT AND RISK MONITORING OF INSTITUTIONS OF HIGHER EDUCATION, APPROVAL OF PRINCIPLES GOVERNING A MEMORANDUM OF UNDERSTANDING WITH THE NEW ENGLAND COMMISSION OF HIGHER EDUCATION, AND DELEGATION OF AUTHORITY TO COMMISSIONER**

**MOVED:** The Board of Higher Education (BHE) hereby receives the attached procedures implementing the provisions of 610 CMR 13.00 and M.G.L. c. 69 § 31B regarding Financial Assessment and Risk Monitoring of Institutions of Higher Education, and authorizes the Commissioner to move forward as outlined in the document.

The BHE also hereby: 1) approves the guiding principles that shall govern a Memorandum of Understanding (MOU) with the New England Commission of Higher Education (NECHE) to conduct financial screenings of private institutions of higher education pursuant to 610 CMR 13.00 and M.G.L. c. 69 § 31B; and 2) delegates to the Commissioner the authority to finalize and execute an MOU with NECHE, consistent with said principles, in consultation with the BHE Chair and the Secretary of Education.

The Commissioner is directed to report back to the BHE during its next regularly scheduled meeting; and to provide the BHE with regular status updates on implementation.

**VOTED:** Motion adopted by BHE 4/8/2020.

**Authority:** M.G.L. c. 69, § 31B (as amended by Chapter 113 of the Acts of 2019); M.G.L. c. 15A, § 6 and 9; and 610 CMR 13

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## BACKGROUND

Recently enacted state law<sup>1</sup> requires the Board of Higher Education (BHE) to establish a process to annually assess the financial information of each Massachusetts independent institution of higher education (IHE) to determine whether an institution is at risk of imminent closure. M.G.L. c. 69, § 31B(b)(2). At its January 10, 2020 meeting, the BHE approved for final promulgation regulations entitled *Financial Assessment and Risk Monitoring (FARM) of Institutions of Higher Education* (610 CMR 13.00), which establish the statutorily required annual financial assessment process for IHEs. In addition, the BHE directed the Commissioner to develop an implementation plan, including a proposed Memorandum of Understanding (MOU) with the New England Commission of Higher Education (NECHE) consistent with statutory and regulatory requirements, for BHE consideration. BHE 20-03.

In furtherance of the BHE's directive, the Commissioner and Department of Higher Education (DHE) staff have developed and are presenting to the BHE for comment and informational purposes proposed FARM implementation procedures (Attachment A). In addition, the Commissioner is presenting to the BHE for approval a set of guiding principles, which will help the Commissioner finalize and execute a pending, draft MOU with NECHE.

### The Procedures

The proposed FARM implementation procedures (Attachment A) set forth processes to be used by the DHE in implementing the regulations, and clarify or expound upon the BHE regulations to, among other things:

- describe in general terms the methodology used in the financial screenings conducted by the DHE;
- recognize and incorporate into the financial assessment process, as authorized by state law, financial screenings conducted by NECHE pursuant to a valid, current MOU;
- provide procedural guidance to IHEs in the development of both risk mitigation plans, public notices and contingency plans for closure and describe the elements that should be included in such plans; and
- describe the composition and responsibilities of an advisory committee, which the Commissioner may use in carrying out his authority under the regulations.

This procedures do not impose upon IHEs new obligations not otherwise required by statute or regulation, but rather are intended to provide clarity to IHEs and the public regarding how the DHE will fulfill its obligations under the law in this area.

### The NECHE Memorandum of Understanding: Guiding Principles

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<sup>1</sup> *An Act to Support Improved Financial Stability in Higher Education*, [St. 2019 c. 113](#).

The recently enacted legislation referenced above, allows the BHE to enter into an MOU with an accrediting agency to conduct the statutorily required, annual financial screenings of IHEs. M.G.L. c. 69, §31B(b)(2). Over the past several months, the Commissioner, along with key members of his staff, has engaged in substantial negotiations with representatives of NECHE, the regional accreditor for Massachusetts, to enter into an MOU, pursuant to which NECHE would share and the BHE would accept for the purposes of M.G.L. c. 69, § 31(b)(2) and 610 CMR 13.03(1), NECHE's annual financial screening results on IHEs accredited by NECHE<sup>2</sup>.

An MOU with NECHE would essentially delegate to NECHE the initial financial screening of NECHE accredited institutions. Consistent with the established statute and BHE regulations, the Commissioner and DHE staff would then engage with IHEs screened-in by NECHE to further assess each IHE's financial status and would request risk mitigation plans, along with contingency closure plans, and, where appropriate, public notification.

The Commissioner and NECHE have reached agreement on essential terms of the MOU, and documentation of those terms are in the final technical review stages. The finalization of the document is anticipated before the BHE's next regularly scheduled meeting. To expedite the execution of an NECHE MOU and its immediate implementation once executed, the Commissioner is seeking delegated authority to enter into an MOU with NECHE, in consultation with the BHE chair and the Secretary of Education, provided that the final document is grounded in, and does not deviate from, the following guiding principles:

- NECHE shall use a robust screening methodology with multiple metrics to ensure that its screening results are based upon a range of financial and non-financial indicators of an IHE's financial capacity.
- NECHE shall share that screening methodology with the DHE so the DHE can validate the NECHE screening process, methodology and outcomes.
- For each IHE that screens in under NECHE's methodology, NECHE shall share, no later than March of each year, the name of each IHE screened in and the screening methodology and results for each IHE.
- Both parties agree to share information and consult with one another throughout the year on IHEs identified outside of the annual financial screening process as financially fragile or at risk.
- NECHE shall annually certify by or before December of each year that NECHE has identified to the DHE all IHEs which, based on NECHE's screening methodology, may be "at risk of imminent closure."
- NECHE and the DHE shall consult periodically to review NECHE's screening methodology and to assess the effectiveness of the cooperative arrangement to review financially fragile IHEs, with the goals of protecting enrolled and prospective students from sudden, institutional closures; and ensuring a process that allows IHEs reasonable prospects of returning to reasonable financial stability.

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<sup>2</sup> There are 94 IHEs with physical locations in the Commonwealth and authorized to grant degrees that are subject to the FARM process. Of these, 74 IHEs are accredited by NECHE.

### Recommended BHE Action

The Commissioner is presenting the proposed FARM implementation procedures (Attachment A) to the BHE for information and comment. The FARM Implementation Procedures will guide the DHE's implementation of M.G.L. c. 31B and 610 CMR 13, and will be periodically reviewed and updated as needed by the Commissioner to ensure consistency with statutory and regulatory intent and requirements.

The DHE recommends that the BHE delegate to the Commissioner the authority to finalize and execute, in consultation with the BHE Chair and the Secretary of Education, an MOU with NECHE that is consistent with statutory and regulatory requirements and adheres to the guiding principles identified above. The Commissioner will report back to the BHE on his progress in this regard during the BHE's next regularly scheduled meeting, and will provide the BHE with regular updates on implementation.



# Massachusetts Board of Higher Education

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## ***Financial Assessment and Risk Monitoring Implementation Procedures for Massachusetts Private Independent Higher Education Institutions Pursuant to 610 CMR 13.00***

***April 08, 2020***

Pursuant to M.G.L. c. 69, § 31B(b)(2), the Board of Higher Education (BHE) is required to establish a process to annually assess each Massachusetts independent institution of higher education's financial information to determine whether an institution is at risk of imminent closure. At its January 10, 2020 meeting, the BHE approved for final promulgation regulations which established the statutorily required annual financial assessment process for independent institutions of higher education ("IHE"). 610 CMR 13.00. This procedures document is intended to supplement those regulations.

### **I. Annual Financial Screenings**

Independent IHEs are subject to an annual financial screening, defined as "a review and evaluation of an institution's financial information, conducted by the board or by an accrediting agency on behalf of the board, designed to assess whether an institution's financial status indicates that it may be at risk of imminent closure." The statute defines imminent closure as "a determination based on the financial screening that an institution is at risk of being unable to continue operations within a period of time established by the board." M.G.L. c. 69, § 31B(a). The Board has established that time period as the remainder of the current academic year and the following academic year, using December 1<sup>st</sup> as the annual threshold measurement date ("Risk of Imminent Closure"). 610 CMR 13.02. An IHE whose screening indicates that it may be at Risk of Imminent Closure will be referred to as having been "screened in."

#### **1) Screenings conducted by NECHE**

M.G.L. c. 69, § 31B(b)(2) specifies that "financial screenings may be conducted by: (i) an accrediting agency, pursuant to a memorandum of understanding approved by the board; or (ii) the department of higher education." The BHE's regulations further allow the Department to use, as its screening tool, information obtained from accrediting agencies to evaluate the sufficiency of an IHE's financial resources. 610 CMR 13.03(1)(b)(3). Accordingly, independent IHEs located in the Commonwealth, authorized to grant degrees, and accredited by the New England Commission of Higher Education ("NECHE") shall have their annual financial screenings conducted by NECHE, pursuant to a current memorandum of understanding. NECHE shall share the results of its financial screenings with the Department, and the Department will accept and use those screening results in accordance with 610 CMR 13.03(1) and the terms as set forth in the memorandum of understanding.

## **2) Screenings conducted by the Department**

In the absence of a valid, current memorandum of understanding with NECHE, the Department shall conduct the annual financial screenings of all independent IHEs located in the Commonwealth, authorized to grant degrees, and accredited by NECHE to identify IHEs deemed potentially at Risk of Imminent Closure. In addition, separate and apart from the existence of an MOU with NECHE, the Department is required to and shall conduct such annual financial screenings of all independent IHEs located in the Commonwealth, authorized to grant degrees, and not accredited by NECHE.

The Department will screen IHEs using multiple methods, measures and data sources, including the analytical framework adopted by NECHE, the Comprehensive Financial Index (CFI), the Student Educational Resources metric, and other financial ratios, non-financial indicators and external ratings and reports. (See Appendix A)

The use of multiple measures and sources of data will help ensure that the risk assessment process is informed by a comprehensive set of generally accepted indicators of financial viability.

## **3) Notification and Consideration of Additional Information Relevant to the Screening**

An independent IHE identified as potentially at Risk of Imminent Closure, will be notified of the Commissioner's findings and will be provided with an opportunity to review the results of the screening process and submit additional information consistent with 610 CMR 13.03(1)(c). This phase of the screening process is intended to provide an opportunity for the Department to validate the screening findings with the IHE and to otherwise help screen out false positives by providing the IHE with an opportunity to review the analytical methodology used and to submit additional information that that IHE or the Commissioner deems relevant to the screening results, including any evaluative information or determinations shared by NECHE. The IHE will have the opportunity to provide the Department with information or updated data to which the Department does not have access that may screen out false positives or to otherwise help the Department in analyzing or validating the screening results. For example, an IHE may provide the Department with more recent financial data that could lead to a different screening result, or it may have resolved a financial deficit through the sale of property or the receipt of a large gift not yet reported through the data systems referenced.

## **II. Determination of Financial Status**

When it is determined that an independent IHE may be at Risk of Imminent Closure, the Commissioner shall provide the IHE with a summary of the basis for the determination and require the IHE to submit information, in the form of a risk mitigation plan, to accurately and fairly determine the IHE's financial status and likelihood of imminent closure and to monitor its condition. The Commissioner's request for a risk mitigation plan will be sent to the chief executive officer of the IHE and the chair and vice chair(s) of the IHE's governing board.

At a minimum, the institution's risk mitigation plan must:

- inform the Board of any known liabilities, risks, or financial issues;
- outline the institution's plans, initiatives, and goals to resolve its financial challenges and sustain operations that meet basic quality standards and reasonable student expectations; and
- substantiate the institution's current and prospective resources and financial capacity to address the risk of imminent closure.

610 CMR 13.03(2)(a). As part of its risk mitigation submission, an IHE may include materials that have already been prepared by the institution in response to the requests of other oversight entities, such as comprehensive risk mitigation reports submitted to the institution's board of trustees, or reports, such as an Annual Report on Finance and Enrollment (ARFE), submitted to an accreditor.

The purpose of the risk mitigation plan is for the IHE to show that it has an achievable plan for financial stability. All submissions should be as specific, detailed, and concrete as possible. The risk mitigation plan should avoid speculative proposals and unreasonable projections. The risk mitigation plan should also be comprehensive, and Department staff may request amendments, revisions and/or additional information from the IHE in order to obtain as much information as possible about the institution's financial stability and potential risk of imminent closure.

At this stage of the process, the independent IHE will also be requested to begin preparing a contingency closure plan.

### **III. Contingency Planning for Closure and Notification to the Public**

If an IHE does not submit any requested risk mitigation plans or, if after a review of the institution's risk mitigation plan, the Commissioner determines that an IHE is at Risk of Imminent Closure, or that the IHE's risk mitigation plans do not demonstrate a likelihood that Risk of Imminent Closure will be reasonably mitigated, the Commissioner shall require continued contingency planning for closure and public notification.

#### **1) Contingency Closing Plan Requirements**

The Department shall provide a template for a contingency closing plan, which shall be made available on its website and upon request. The contingency closing plan must, at a minimum, include the following:

- a) arrangements for students to complete their programs of study, which must include the development of transfer and articulation agreements for current and incoming students. The institution should make efforts to ensure that its students receive as much credit for prior coursework as possible and that the costs to its students for continuing their degree programs at successor institutions will be reasonable;

- b) a plan for the transfer and long-term maintenance of student records, including but not limited to student transcripts, should the institution cease to exist, and where and how such records will be transferred. The institution should make every effort to place its student transcripts with another institution which will be able to provide registrar services which conform to generally accepted industry practices to former students and alumni on behalf of the potentially closing institution;
- c) information about the rights and responsibilities of student loan borrowers;
- d) information about the institution's financial condition, accreditation status with any and all accreditors, and any outstanding compliance issues regarding federal and state financial aid programs;
- e) a plan 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;
- f) a comprehensive budget which shows the existence and commitment of sufficient resources to sustain the institution's educational offerings through closure; and
- g) consideration of the broader impacts of closure on the institution's key constituencies, including faculty, staff, and the host community or communities.

M.G.L. c. 69, s. 31B(b)(3); 610 CMR 13.04.

The Board reserves the right to request any additional financial or other records as necessary to evaluate the IHE's financial status, its likelihood of imminent closure, and the feasibility and completeness of its contingency closing plan. Pursuant to M.G.L. c. 69, § 31B(b)(3), an independent IHE required to submit a contingency plan for closure is required to provide the Board with access to all financial and other records upon request.

## **2) Notification to the Public**

Pursuant to 610 CMR 13.03(2)(b)(2), if an institution does not submit the requested risk mitigation plans, or if the submitted plans do not demonstrate the likelihood that Risk of Imminent Closure will be timely mitigated, the Commissioner shall, after providing an IHE with notice and a reasonable opportunity to cure, require an institution to provide notification to the public. The Board recognizes that the timing, manner, and format of notification to the public may vary depending on the size and type of IHE. Accordingly, in addition to the minimum notification requirements set forth in 610 CMR 13.04(2), the details surrounding the timing, manner, and format of an IHE's required notification to its constituencies will be determined in the sole discretion of the Commissioner after consultation between the IHE and Department staff and may be informed by the content of the IHE's risk mitigation plans. In situations where an IHE's financial condition is dire or deteriorating rapidly, such that protracted procedural considerations described above may jeopardize the best interests of enrolled or prospective

students, the Commissioner may abbreviate campus response times to submit missing or amend existing risk mitigation plans and/or, in exigent circumstances, may require expedited public notification, the timing and content of which shall be appropriate to the circumstances.

The Department shall maintain a public list on its website of those independent IHEs which have been required by the Department to issue such notifications. The list will be updated within 15 business days of the transmission of the notification to the IHE described above.

#### **IV. Advisory Committee**

The Commissioner may convene an ad hoc or standing advisory committee to participate in the review of an IHE during any stage of the process at his own discretion.<sup>1</sup> An IHE under review may request the convening and participation of an advisory committee, if one has not already been convened by the Commissioner, in the event the Commissioner has determined that the IHE will be required to both submit a Contingency Plan for Closure and provide notification to the public; the Commissioner will not unreasonably withhold assent to such requests for the formation of an advisory committee from any IHE under review.

The Commissioner shall charge the advisory committee with the scope, purpose, and timeline of its review, and the advisory committee shall submit an evaluation with its findings and recommendations to the Commissioner consistent with timelines established by the Commissioner.

##### **1) Membership**

The advisory committee shall be composed of 3 to 5 individuals, at least one of whom shall be a representative of a consumer protection or student advocacy organization.

Members of the advisory committee shall be selected by the Commissioner from among professionals with appropriate credentials and demonstrated professional experience in higher education administration, finance, development, accreditation, and/or other relevant activities within higher education. Professionals and practitioners from appropriate fields, particularly accounting and real estate, may also be included. The composition of the advisory committee shall be responsive to the requirements of pertinent federal and state affirmative action/equal opportunity guidelines.

In the event that it is deemed necessary, given the circumstances of a specific institution, the Commissioner may expand the membership of the advisory committee from its standing members to include an additional member or members with relevant expertise and knowledge.

##### **2) Conflicts of Interest**

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<sup>1</sup> It is anticipated that for the first few years of implementing 610 CMR 13.00, the advisory committee will be a standing committee, and that the standing committee will be available to serve in an advisory or consulting capacity to both the Commissioner and the BHE to help assess implementation and advise on any necessary policy development.

Advisory committee members shall have a disinterested professional commitment to the financial review of institutions of higher education as charged by the Commissioner (in general) and to the task of rendering objective findings and recommendations based upon empirical evidence and informed judgments (in the case of particular institutions). No person shall serve on the advisory committee who has had any official or unofficial connection with the institution under review or who the Commissioner has reason to believe has an independent or pecuniary interest in the outcome of the review. No person shall serve on the advisory committee who is employed by a public or independent institution determined by the Commissioner to be in direct competition with the institution under review.

### **3) Responsibilities**

The advisory committee shall study all materials submitted by the institution to the Board; may meet with its representatives to gather additional information; and shall deliver findings and recommendations, based upon the established charge, scope and purpose of the review, to the Commissioner.

## Appendix A- DHE Screening Methodology

The Department will screen IHEs using multiple methods, measures and data sources. - Screenings conducted by the Department shall be done by first using a methodology that offers a preliminary assessment of an institution's ability to "teach out" its enrolled and admitted students, also known as the Student Educational Resources ("SER") metric. Assuming a hypothetical closure and wind down scenario, the SER calculates how long an independent IHE can teach its enrolled and admitted students, accounting only for known or reasonably predictable revenues and assets to cover its obligations. This metric assumes no new student admissions and no additional resources or expenses other than those required for fixed administrative costs, existing programs of study, debt obligations, and the availability of tuition and fee revenue, auxiliary revenue, and expendable net assets. Data reported annually to the federal Integrated Postsecondary Data System ("IPEDS") are used for this analysis. As a state higher education executive office, the Department has access to the most recently reported IPEDS data, and such data reflect the most recently approved financial statements from the prior fiscal year.

In addition to the SER metric, the Department intends to use the analytical framework adopted by NECHE, the Comprehensive Financial Index (CFI), and other financial ratios, non-financial indicators and external ratings and reports to assess the financial health of each IHE.

Other indicators that the Department may consider in its screening include:

- tuition discounting rates;
- tuition dependency;
- trends in student enrollment, retention, and completion;
- credit ratings assigned to institutions by credit rating agencies or services; and
- US Department of Education Heightened Cash Monitoring ("HCM") or Letter of Credit ("LOC") status.