

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

13.01: Scope and Purpose

610 CMR 13.00 governs the Board of Higher Education's annual review of independent institutions of higher education to assess and monitor the financial stability and viability of said institutions. This section does not affect the existing jurisdictional exceptions from 610 CMR 2.00 for 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, except that such institutions which seek access to state financial aid administered by the Board shall be subject to 610 CMR 13.03 for the limited purpose of state financial aid participation. 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:

Accreditor. 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 authorized by the Board pursuant to 610 CMR 2.00 to grant degrees and/or authorized to participate in the Commonwealth's state financial aid program through a valid and current state financial aid participation agreement.

Risk of Imminent Closure. A determination made by the Department, 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 1st as the annual threshold measurement date.

13.03: Annual Review

The Department shall undertake mandatory annual reviews of Institutions in accordance with the following procedures.

(1) Screening and Inquiry

- (a) Annual Screening. All Institutions shall be screened annually for the purpose of assessing each Institution's past, present, and future financial stability, 610 CMR 2.07(3)(f), to identify any Institution at Risk of Imminent Closure.
- (b) Screening Tools. The Board shall establish the procedures, including the analytical methodology, to be used in the screening process through policy, after consultation with representatives of Institutions, 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 has sufficient resources to financially sustain operations in order to substantially fulfill its obligations to enrolled or admitted students.
 - 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 but not limited to accreditors, the U.S. Department of Education, or the Massachusetts Office of the Attorney General, that could allow the Department to evaluate the sufficiency of the Institution's financial resources.
- (c) Inquiry. The Commissioner shall open an inquiry into each Institution identified as at Risk of Imminent Closure under this section. The inquiry shall include Department staff outreach to the administration of the Institution to provide an opportunity to review the results of the screening process and to submit additional information relevant to the inquiry.

(2) Monitoring and Risk Mitigation Review

- (a) Submission of Risk Mitigation Plans. If the initial inquiry does not result in satisfactory resolution of the concern(s) identified during the screening process, the Commissioner shall require the Institution to submit its risk mitigation plans, which shall outline the Institution's plans, initiatives, and goals to sustain operations and substantially fulfill its obligations to enrolled and admitted students.

1. 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. At a minimum, copies of the Commissioner's request shall be sent to the chair and vice chair of the Institution's governing board.
 2. The information submitted by the Institution in its risk mitigation plans shall, at a minimum, substantiate the Institution's current and prospective resources and financial capacity to fulfill its obligations to enrolled and admitted students for the balance of the current academic year and the entire subsequent year, using December 1st as the annual threshold measurement date.
- (b) Review of Risk Mitigation Plans. Department staff shall review the Institution's risk mitigation plans. The Commissioner shall, after Department staff review, make one of the following determinations:
1. if the risk mitigation plans are deemed satisfactory, such that the Institution is not at Risk of Imminent Closure the Department shall monitor the implementation of the plans as set forth in 610 CMR 13.03(c); 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 contingency planning for closure and, after notice to the Institution and an opportunity to cure, may require notification to the public, as set forth in 610 CMR 13.03(d) and/or may impose sanctions as outlined in 610 CMR 13.06.
- (c) 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.
1. Department staff may require periodic and other reports as part of the monitoring process.
- (d) Contingency Planning for Closure and Notification to the Public. If the Commissioner determines, after Department staff review, that an Institution is at Risk of Imminent Closure or that the Institution's plans to address the Department's concerns identified through the screening, inquiry, and monitoring

processes have not resulted and are unlikely to result in a satisfactory resolution of those concerns, the Commissioner may require the following:

1. The Institution shall promptly prepare and submit to Department staff a contingency closing plan in a format prescribed by the Department.
2. The Institution shall inform enrolled students, accepted students, pending applicants, faculty, staff, and other relevant stakeholders 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 subsequent academic years. The communications shall be made in a manner, format, and timing acceptable to the Department. 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 required to issue notifications pursuant to this section.

13.04: 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 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 Institution has been required to submit a Contingency Plan for Closure and a Notification to the Public. The Commissioner's assent to such a request will not be unreasonably withheld.

13.05: Confidentiality

Unless otherwise specified above, the Department shall protect from disclosure and shall maintain as confidential all information made or received by the Department during the screening, inquiry, and monitoring processes to the maximum extent permissible under state law, including but not limited to the investigatory and deliberative process exemptions to the Public Records Law.

13.06: Sanctions

If an Institution fails to cooperate with the Department in the screening, inquiry, monitoring, and/or contingency planning and notification processes, 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, as set forth in 610 CMR 2.10(2).
- (3) Referral by Department staff to the Office of the Attorney General.

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.