



Massachusetts Department of Higher Education

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Carlos E. Santiago
Commissioner
Chris Gabrieli
Board Chairman

June 29, 2020

RE: An Act to Support Improved Financial Stability in Higher Education

[President/CEO Name] [Title]
[Institution]
[Mailing Address]
[City], [State] [Zip]

Dear [Title] [President/CEO Name]:

I hope that you are well as you navigate today's higher education challenges.

The purpose of my outreach today is to provide you with important information regarding the Commonwealth's new law¹ which, among other things, requires the Massachusetts Board of Higher Education ("BHE") to conduct annual financial screenings, either directly or through an accrediting agency, on all private higher education institutions located in the Commonwealth and authorized to grant degrees. As most of you know, this law establishes several new requirements for private institutions of higher education intended to avert sudden, precipitous institutional closures and the unfortunate impacts such closures have on students and their families.

The BHE is tasked with enforcing the law; I serve as the chief executive officer of the Massachusetts Department of Higher Education ("DHE"), the state agency that serves as the staff for the BHE. This letter is intended to highlight for you four important parts of the new law, as outlined below, to ensure you are informed about your institution's new legal responsibilities, and also to provide you with DHE contact and other helpful information.

Before turning to the particulars of the new law, I want to acknowledge the important work underway within the private higher education sector to appropriately contain and respond to COVID-19. On behalf of the Board and Department of Higher Education, I want to thank you for the adjustments you have made, and continue to make, to help support students, faculty and staff, and to keep your campus communities safe during these challenging times. I also want to assure you that the Department remains mindful of the serious financial and other strains this pandemic is causing within our higher education community as we continue to execute our statutory and regulatory consumer protection responsibilities.

¹ The new legislation – "[An Act to Support Financial Stability in Higher Education](#)" – was signed into law in November 2019. While the bill has several sections, the ones relevant to private institutions of higher education amend M.G.L. c. 69, s. 31B.

1. **Annual Financial Screenings and Evaluations.** The most widely known element of this new law is that private institutions of higher education will be screened on an annual basis to determine whether they may be at risk of imminent closure. If the results of an annual screening indicate that an institution may be at risk of imminent closure, the DHE will require risk mitigation planning and contingency planning for closure. In certain circumstances, the DHE may also require public notification that an institution is at risk of imminent closure. M.G.L. c. 69, s. 31B(b)(2) and (3). Earlier this year, the BHE promulgated regulations ([610 CMR 13.00](#)), and the DHE established [procedures](#), which provide greater detail about how this process will unfold. The DHE is undertaking its screening and evaluation process now.

Under the new law², the BHE may conduct these annual screenings either directly or through an accrediting agency with which the BHE enters into a memorandum of understanding (“MOU”). In accordance with this authority, the BHE is currently implementing this provision of the law under a BHE-approved MOU with the New England Commission of Higher Education (“NECHE”). NECHE member institutions have already, in November 2019, undergone a financial screening conducted by NECHE, and pursuant to the MOU with NECHE, those screening results have been shared with the DHE. I have been in contact with the institutions that have been identified as at risk through the NECHE screening process to personally explain the next phase of the DHE’s financial assessment and risk monitoring (“FARM”) process, which involves determining whether such institutions are potentially at risk of imminent closure as defined in 610 CMR 13.02.

Institutions that are not accredited by NECHE will be screened annually by the DHE. These screenings are in process and are based upon preliminary data available in the Integrated Postsecondary Education Data System (“IPEDS”) and other publicly available sources. Once the DHE-conducted screenings have been completed, any institution that did not satisfy the threshold criteria in the DHE’s screening methodology will be contacted by me, and the process will proceed from that point in the same way as it does for the NECHE-accredited institutions as set forth in the regulations and procedures.

I would like to note one additional important point: the new law guarantees the confidentiality of “any information submitted to, or developed by, the board in furtherance of” the law. M.G.L. c. 69, s. 31B(d). This means that information, data, and documents that you provide to the DHE in the course of these annual screenings and risk mitigation planning discussions are not subject to Massachusetts public records law and cannot be released by the DHE. This provision is essential for ensuring open and frank information sharing between your institution and the DHE.

2. **Immediate Notification of Financial Liabilities and Risks.** Outside of and in addition to the annual financial screening requirement, your institution has an affirmative obligation to immediately inform the BHE of “any known financial liabilities or risks that are reasonably likely to result in the imminent closure of the institution *or* otherwise

² M.G.L. c. 69, s. 31B(b)(2).

negatively affect the institution's ability to fulfill its obligations to current and admitted students." M.G.L. c. 69, s. 31B(b)(1). This element of the new law is especially important in the coming weeks and months, as the higher education community continues to cope with the impacts of the COVID-19 pandemic.

To help satisfy this statutory requirement, and to facilitate communications, we have set up a confidential email address. I ask that you contact the BHE, by submitting an email to DHE.FARMSubmissions@mass.gov, if your institution is faced with or considering any of the following:

- Anticipated problems relating to liquidity or cash deficiencies.
- Any significant negative financial event (e.g., adverse action by your lender or rescission of or decrease in support from any source during the current fiscal year that would have a substantial impact on the institution's budget and/or the sustainability of its academic programming).
- Any decision to close any instructional locations or branch campuses.
- Initiating or continuing merger or teach-out discussions with other institutions.
- Major changes in your academic programs, (e.g., suspending admissions to programs, closing programs while students are still enrolled, or decisions to permanently alter the instructional mode of programs).
- Any other fiscal or other "adverse events" reported to your accreditor (e.g., adverse events" reported to NECHE under the Commission's Standard 9.10) or to another oversight entity.³

Anything submitted to the BHE under this requirement should also include a narrative delineating how COVID-19 prevention and response efforts have financially impacted the institution. Once again, anything submitted to the BHE as part of an institution's compliance with this section of the new law will be kept confidential and will not be subject to Massachusetts public records law, pursuant to M.G.L. c. 69, s. 31B(d).

3. **Posting of Audited Financial Statements.** Another requirement of the new law is that each institution must "post on its website a copy of the institution's annual financial report or statement...and a summary of the report, however termed, that is written in terms that are understandable by the general public." M.G.L. c. 69, s. 31B(f).

For almost all institutions, the most recently closed fiscal year is FY19. In order to satisfy this requirement, I am requesting that, for institutions whose fiscal year ends between January and September, FY19 audited financials be posted within the next week, or by July 10, 2020. For institutions whose fiscal year ends between October and December, FY19 audited financials must be posted by no later than August 31, 2020. Please send the

³ Institutions accredited by NECHE will note that the listed criteria align in large part with the information also requested by NECHE on May 1. The DHE will accept submissions made to NECHE in satisfaction of this requirement, provided that the institution also includes the requested narrative on COVID-19 impact, and subject to requiring follow-up or clarifying information.

URL for the webpage where your institution's audited financials are posted to DHE.FARMSubmissions@mass.gov.

After this first year, the BHE asks that an institution post its audited financial statements no later than 6 months after the end of its fiscal year. The DHE is in the process of developing a portal through which institutions can certify compliance with this provision electronically. We will provide more information about this portal in the coming months.

4. **Required Training for Institutional Trustees.** The new law mandates that "each member of an institution's governing body shall receive instruction and 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, s. 31B(e). The DHE will be releasing more specific information and guidelines about this requirement over the summer, working in collaboration with our colleagues in the Attorney General's Office.

Finally, I ask that each institutional president designate an institutional contact for future communications from the DHE related to this topic, as we expect to disseminate additional information about trustee training and electronic certifications later this summer, and that you send the contact information for that person to DHE.FARMSubmissions@mass.gov no later than July 10, 2020. (Please note that, for certain elements of this law, in particular annual financial screenings, the DHE will continue to communicate with institutional presidents at various times throughout the process.) I would also request that you circulate this communication to the Chair and Vice-Chair(s) of your institution's Board of Trustees or equivalent.

We have posted detailed information about FARM, as well as relevant materials, on our [website](#), and we suggest that you and your staff review that resource as you familiarize yourself with the requirements of this new law. We intend to update our website frequently, as necessary, so we recommend that you consult it on a regular basis.

Thank you in advance for your anticipated cooperation and understanding as we proceed with the initial year of this new structure and process.

Sincerely yours,

Carlos E. Santiago
Commissioner of Higher Education

CC: Patricia Marshall, Ph.D., Deputy Commissioner for Academic Affairs & Student Success
Constantia Papanikolaou, Chief Legal Counsel
Tom Simard, Deputy Commissioner for Administration & Finance