

610 CMR: BOARD OF HIGHER EDUCATION

610 CMR 13.00: FINANCIAL ASSESSMENT AND RISK MONITORING OF INSTITUTIONS OF HIGHER EDUCATION

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13.01: Scope and Purpose

610 CMR 13.00 governs the Board of Higher Education's annual assessment of independent institutions of higher education to review and monitor the financial stability and viability of said institutions, as authorized pursuant to M.G.L. c. 69, § 31B. 610 CMR 13.01 does not affect the existing jurisdictional exceptions from the requirements set forth in 610 CMR 2.00: *Degree-granting Regulations for Independent Institutions of Higher Education* for certain in-state, independent institutions chartered prior to 1943 that are authorized by the legislature or state constitution to offer degree programs and confer postsecondary degrees in the Commonwealth. 610 CMR 13.00 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:

Accrediting Agency. 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 located in the Commonwealth and authorized to grant degrees pursuant to any general or special law.

Risk of Imminent Closure. A determination made by the Commissioner, 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 Financial Assessment

The Department shall ensure that mandatory annual financial assessments of Institutions are conducted in accordance with the following procedures.

(1) Screening.

- (a) Annual Screening. All Institutions shall be screened annually for the purpose of assessing each Institution's past, present, and future financial stability to identify any Institution potentially at Risk of Imminent Closure.

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(b) Screening Tools. The Board shall establish the procedures, to be used in the screening process, after consultation with representatives of Institutions and other stakeholders, 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 may be at Risk of Imminent Closure.
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 Accrediting Agencies, the U.S. Department of Education, and the Massachusetts Office of the Attorney General, that could allow the Department to evaluate the sufficiency of the Institution's financial resources.

(c) Notification and Consideration of Other Information Relevant to the Screening. The Commissioner shall notify each Institution identified through the screening process as potentially at Risk of Imminent Closure under 610 CMR 13.03(1)(c). The notification shall include Department staff outreach to the administration of the Institution to provide an opportunity to review the results of the screening process, including the analytical methodology, and to submit additional information that they or the Commissioner deem relevant to the screening results, including updated data not taken into account as part of the methodology used.

(2) Determination of Financial Status. If the screening results, including any information provided to the Department in 610 CMR 13.03(1)(c), indicate an Institution may be at Risk of Imminent Closure, the Commissioner shall provide the Institution with a summary of the basis for his or her determination and require the Institution to submit information, in the form of a risk mitigation plan, to accurately and fairly determine the institution's financial status and likelihood of imminent closure and to monitor its condition, and prepare a contingency closure plan.

(a) Submission of Risk Mitigation Plans. The Institution's risk mitigation plans shall, at a minimum, inform the Board of any known liabilities, risks, or financial issues and outline the Institution's plans, initiatives, and goals to sustain operations and to substantiate its current and prospective resources and financial capacity to address the Risk of Imminent Closure. 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. Copies of the Commissioner's request shall be sent to the chair and vice chair(s) of the Institution's governing board.

(b) Review and Evaluation of Risk Mitigation Plans. Department staff shall review the Institution's risk mitigation plans and evaluate the Institution's Risk of Imminent Closure. The Commissioner shall, after Department staff review, make one the following determinations:

1. if the risk mitigation plans are deemed satisfactory, such that the Institution is deemed no longer at Risk of Imminent Closure, the Department shall monitor the implementation of the plans as set forth in 610 CMR 13.03(3); 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 continued contingency planning for closure and, after notice to the Institution and an opportunity to cure, notification to the public, as set forth in 610 CMR 13.04 and/or may impose sanctions as outlined in 610 CMR 13.07.

(3) 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:

- (a) the concerns identified have been satisfactorily resolved, such that the Institution has sufficiently mitigated the Risk of Imminent Closure; or
- (b) 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. Department staff may require periodic and other reports as part of the monitoring process.

13.04: Contingency Planning for Closure and Notification to the Public

(1) Contingency Planning for Closure. All contingency closure plans required by the Commissioner from an institution shall be submitted by the institution to Department staff in a format prescribed by the Department. While the development of contingency closure plans is typically an iterative process, all complete contingency closure plans must, in addition to any elements required by M.G.L. c. 69, § 31B, include the development of transfer and articulation agreements for students, provide a comprehensive budget which shows the existence and commitment of sufficient resources to sustain the institution's educational offerings through closure, and consider the broader impacts of closure on the institution's key constituencies, including faculty, staff, and the host community.

(2) Notification. An institution required to post public notification based on a determination made by the Commissioner under 610 CMR 13.03(2)(b)2. shall inform enrolled students, accepted students, pending applicants, faculty, staff, and other relevant stakeholders, including the chief executive officer of the host community, the elected state representative and senator in the legislative district where the Institution is located, the Secretary of Housing and Economic Development, and the Secretary of Labor and Workforce Development, 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 the subsequent academic year. The communications shall be made in a manner, format, and timing acceptable to the Department. The Institution shall also include clear and conspicuous notice in any promotional materials aimed at recruiting or retaining students. 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 currently required to issue notifications pursuant to 610 CMR 13.04.

(4) Institutions required to submit contingency closure plans to the Department continue to be subject to the requirements set forth in 610 CMR 13.03(2) and (3), either until a determination is made by the Department that the concerns identified have been satisfactorily resolved, such that the Institution has sufficiently mitigated the Risk of Imminent Closure or until the Institution is closed.

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

13.06: Confidentiality

Unless otherwise specified above, the Board and the Department shall protect from disclosure and shall maintain as confidential all information submitted to or developed by the Board, acting by or through the Commissioner, the Department, or the Advisory Committee, pursuant to and in furtherance of 610 CMR 13.00, to the maximum extent permissible under state law.

13.07: 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:

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- (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 and 31B, as amended by St. 2019 c. 113.