

Massachusetts Proposes Enhanced Oversight of College Finances

BY CHELSIE A. VOKES • FEBRUARY 19, 2019

In the wake of the recent high-profile closures of nonprofit colleges in Massachusetts, Massachusetts's Board of Higher Education (BHE) is seeking to enhance its oversight of nonprofit institutions of higher education ("Institutions"). On January 22, 2019, the BHE's Working Group (the "Working Group") released a final report and recommendations entitled "Transitions in Higher Education: Safeguarding the Interests of Students" (THESIS Report).

In summary, the THESIS Report concluded that 1) there is "significant" risk that Institutions will struggle to stay financially viable in the future, and 2) current oversight and intervention procedures are inadequate to protect students and prevent future closures.

In order to address these risks, the THESIS Report suggested a four-step approach: 1) screening, 2) active monitoring, 3) contingency planning and student notification, and 4) when necessary, sanctioning and revocation.

In order to screen Institutions for risk, the Working Group adopted a formula, called the Teach-out Viability Metric, developed by EY-Parthenon (described on page 12). The formula will identify financially at-risk Institutions using data that Institutions are already required to provide.

The critical point in the screening step is an 18-month sustainability threshold. If screening reveals that an Institution is at risk of crossing this threshold, then the BHE will step in with active monitoring and eventually (if and when this threshold is crossed) a mandatory contingency planning and student notification of the impending closure no later than December 1 of any school year.

In addition to suggesting that the BHE adopt regulations implementing the Working Group's recommendations, the THESIS Report also suggested revisions to the Office of Student Financial Aid Participation Agreement (the OSFA Agreement), which Institutions that wish to obtain state financial aid must sign. The proposed changes to the OSFA Agreement would require that in order to obtain state funding, Institutions consent to screening and oversight by the BHE.

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On January 22, 2019, the BHE voted to adopt the THESIS Report's suggestions and a timeline for its implementation. Importantly, the timeline reveals that DHE plans to develop draft regulations over the next several months. Based on the tentative timeline, the BHE plans to publish the draft regulations on July 12, 2019, followed by a period for public comment and a public hearing date on July 24, 2019.

The BHE hopes to promulgate the final regulations no later than October 2019. The timeline also reveals that the BHE plans to amend the OSFA Participation Agreement in time for the 2019-2020 school year.

Client Tip: Institutions should plan to review the proposed regulations and participate in the public comment period. Institutions should closely review their 2019-2020 OSFA Participation Agreement when it's released and make sure that they fully understand any new obligations contained therein.

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