

STATEMENTS OF FISCAL EFFECT AND SMALL BUSINESS IMPACT

The Board of Higher Education seeks to enact the following new regulations, 610 CMR 16.00: Degree Granting Regulations for Pilot Proposals on Innovation.

The Board of Higher Education (Board or BHE) is the Commonwealth's state higher education authority with regulatory authority, in varying degrees, over all twenty-nine (29) public and eighty (80) independent institutions of higher education (IHEs) located in the Commonwealth and authorized to grant degrees. Working through Department of Higher Education (Department or DHE) staff, the BHE is responsible for, among other things, the degree-granting program approval process in the Commonwealth to assure prospective students and other interested parties that licensed institutions meet minimal levels of quality while providing an appropriate learning environment for all students. Such determinations are based, in part, on an applicant-IHE's mission, programs of study, faculty and staff qualifications, leadership and organization, and financial sustainability.

Following extensive discussions with institutional stakeholders, careful reflection on the Board's formally adopted "Innovation-centered" strategic priority, and significant changes in our external environment, Department staff have prepared draft regulations intended to help advance the BHE's consideration of responsible opportunities for programmatic experimentation. To that end, Department staff have drafted Board regulation 610 CMR 16.00, "Degree Granting Regulations for Pilot Proposals on Innovation," which provides the Board with flexibility to modify or temporarily waive its own regulations or standards in those instances where existing BHE regulations disfavor experimentation as a rapid response to shifting externalities.

Specifically, the proposed regulation establishes a framework for the Board to carefully consider, advance, and evaluate "pilot proposals" – from public *and* independent institutions of higher education subject to Board jurisdiction – that may be inconsistent with one or more specific BHE regulatory or policy requirement(s) related to degree-granting authority (610 CMR 2), but *are* responsive to significant changes in society, demographics, technology, educational research, and/or expectations regarding post-secondary education. The criteria, requirements, and procedures set forth therein will allow for responsible experimentation and advance innovation within a controlled, monitored environment.

The Department's proposed regulation places the onus on applicant-institutions of higher education to demonstrate how their proposals will ultimately advance institutional goals, broaden student access to higher education, and lead to positive student outcomes. DHE's draft regulations align with the BHE's broad responsibility for ensuring that students and families alike are well-informed and that their consumer rights are protected, while cultivating the evidence-based evaluations that must necessarily be considered before enacting any broader regulatory changes.

Fiscal Effect on the Public and Private Sectors

M.G.L. c. 30A provides that, before any regulation can become effective, agencies of the Commonwealth must file an estimate of its fiscal effect on both the public and private sectors for the first and second years and a projection for the first five years; or state that there is no fiscal

effect (if that is the case). According to the Secretary of the Commonwealth's Office, this requirement is not the cost/benefit analysis that accompanies federal regulations, but rather the agency's best judgment of the "out of pocket" expenses that will be incurred in complying with the regulation.

Public Sector

All public institutions of higher education in Massachusetts insofar as such institutions choose to advance an innovation proposal that is inconsistent with one or more specific BHE regulatory or policy requirements related to degree-granting authority, would be subject to this regulation and may incur administrative expenses typically associated with the public academic program approval process set forth under M.G.L. c. 15A, section 9 and 610 CMR 2.00. The regulation also requires an institution whose pilot proposal is conditionally approved to submit annual status reports to the Board for at least the first five (5) years of a innovation/pilot initiative's operations, which must include narrative and statistical information on the institution's compliance with Board standards as well as figures related to enrollment, finances, and assessment of progress in meeting program and student learning outcomes. There is no discernable cost to Massachusetts consumers and no loss of opportunity or benefit.

Private Sector

All independent (private) institutions of higher education in Massachusetts that are accredited and have been operating with BHE or legislative authority in the Commonwealth for at least 6 years, insofar as such institutions choose to advance an innovation proposal that is inconsistent with one or more specific BHE regulatory or policy requirements related to degree-granting authority, would be subject to this regulation and may incur administrative expenses typically associated with the independent program approval process set forth under M.G.L. c. 69, section 30. The proposed regulation requires that an independent institution of higher education seeking approval for a pilot proposal shall submit the appropriate fee amount as already established for the program approval process under 610 CMR 2.06(1), and is to be paid to the Board's Licensing Fee Trust Fund and used solely for the purposes of the Licensing Trust Fund. There is no discernable cost to Massachusetts consumers and no loss of opportunity or benefit.

Small Business Impact

In addition, M.G.L. c. 30A provides that before any regulation becomes effective, agencies of the Commonwealth must file with the Secretary of the Commonwealth a statement considering the impact of said regulation on small businesses. Such statement of consideration shall include, but not be limited to, an estimate of the number of small businesses subject to the proposed regulation; projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation; the appropriateness of performance standards versus design standards; an identification of relevant regulations of the promulgating agency, or any other state agency, which may duplicate or conflict with the proposed regulation; and an

analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth.

An estimate of the number of small businesses subject to the proposed regulation

While the proposed regulation will apply to all Massachusetts independent institutions of higher education under BHE's degree-granting authority, please be advised that public higher education institutions do not fall under the definition of "small businesses" as established by the U.S. Small Business Administration in 13 CFR section 121.201. BHE believes that no more than 10 to 15 of the Commonwealth's 80 private (independent) higher education institutions fall under the definition of "small businesses" as established by the U.S. Small Business Administration in 13 CFR section 121.201.

Projected reporting, recordkeeping, and other administrative costs

The Department anticipates administrative costs related to reviewing pilot proposal program applications and annual reports submitted by IHEs that have obtained conditional approval under the regulation. Furthermore, both private and public IHEs seeking approval for a pilot proposal will be required to submit the appropriate fee amount as already established for the program approval process under 610 CMR 2.06(1), and institutions whose proposals are conditionally approved by the Board may incur administrative costs associated with annual reporting requirements over the first five (5) years of operation.

Appropriateness of performance standards versus design standards

Performance standards and design standards are appropriate for this regulation, as it seeks to establish a framework through which pilot proposals from public or independent institutions of higher education may be considered and evaluated despite inconsistency with current BHE regulations, while setting clear procedures, expectations, and review criteria for IHEs submitting such proposals.

Identification of duplicate or conflicting regulations

The Board has not identified any duplicate or conflicting regulations promulgated by any state agency. Moreover, aside from regional accreditor-specific innovation policies such as that of the New England Commission of Higher Education (NECHE), the Department is not aware of any Federal Regulation that establishes a framework for the Board to consider, advance, and evaluate pilot proposals from a public or independent institution of higher education.

Analysis of whether the proposed regulation is likely to deter or encourage the formation of new businesses in the Commonwealth

Considering that higher education is an important economic driver in Massachusetts, the Board believes that the Commonwealth's economy stands to benefit from innovation proposals

that are responsive to market demands and ultimately may spur enrollment increases and/or programs offered at a lower cost and time to degree. The state economy would also greatly benefit from an influx of postgrads in high-demand fields who ultimately choose to work and settle in the Commonwealth following their attendance at a Massachusetts-based institution of higher education. Ultimately, the proposed regulation would allow Massachusetts to stay competitive with peer states that are similarly finding ways to advance innovation within the context of higher educational programmatic offerings.