

Managing Institutional Closure: The Role of States in Connecting Systems to Protect Students

About the National Governors Association & New America

The National Governors Association (NGA) is the nonpartisan voice of the nation's governors in all 55 states, commonwealths, and territories. New America is a nonpartisan think tank that uses original research and policy analysis to help solve the nation's critical education problems. The NGA Center for Best Practices has partnered with New America to deliver this resource to governors' education policy advisors and other relevant stakeholders. New America's research from November 2019¹ and March 2020² on higher education accountability systems and college closures were instrumental in the development of this content.

Background

The COVID-19 crisis presents an unprecedented emergency for the financial health of higher education institutions. Enrollment revenue projections for the upcoming term are both unpredictable and alarming, as some surveys have found that a sizable percentage of students have changed their plans for the fall.³ Summer programs and other income-generating activities have been cancelled. Institutions are also incurring an array of unexpected costs such as refunds for unused room and board.⁴ Moreover, institutions will all but certainly be forced to operate with less state support in the forthcoming fiscal year. In fact, the new economic reality has already prompted multiple states to halt as much as nearly \$138 million in previously appropriated support for colleges and universities.⁵

Some institutions have the resources to survive this economic crisis. Several others, however, have already announced that they will be closing permanently.⁶ This is not without precedent; over 500,000 students were displaced by more than 1,200 campus closures between 2014 and 2019.⁷ While many of these institutions managed orderly closures and wound down their programs over time, others closed precipitously and without enough warning to students or staff. Such instances left tens of thousands of students in debt and with great uncertainty about the future of their education.

Governors have considerable opportunity to use the regulatory guardrails already in place and take proactive measures to ensure that students receive proper communication from closing institutions, have a realistic opportunity to complete their degree or credential, and are not left in financial ruin when their institutions close before they can graduate. This resource is meant to be a primer on the state role in quality assurance and consumer protection. It also offers a guide for prospective state action to forecast and manage institutional closures induced by COVID-19.

¹ <https://www.newamerica.org/education-policy/reports/bermuda-triad/>

² <https://www.newamerica.org/education-policy/reports/anticipating-and-managing-precipitous-college-closures/background-on-college-closures/>

³ <https://cdn2.hubspot.net/hubfs/4254080/SimpsonScarborough%20National%20Student%20Survey%20.pdf>

⁴ <https://www.nytimes.com/2020/04/15/us/coronavirus-colleges-universities-admissions.html>

⁵ <https://www.wsj.com/articles/public-universities-see-state-funding-disappear-effective-immediately-11587653753>

⁶ <https://www.insidehighered.com/news/2020/04/02/two-small-colleges-winding-down-operations-coronavirus-impact-looms-over-higher-ed>

⁷ <https://www.chronicle.com/interactives/20190404-ForProfit>

The State Role in Institutional Closures and Accountability

The existing higher education accountability system is comprised of state oversight, accrediting agencies, and the U.S. Department of Education. In this so-called “triad,” states are responsible for authorizing institutions to operate and providing consumer protection to students. Accrediting agencies are charged with assuring the quality of institutions, while the U.S. Department of Education certifies institutional eligibility for federal aid. The state role in the triad is foundational because institutions must obtain state authorization prior to seeking accreditation or federal aid eligibility.⁸ Notably, a considerable number of non-degree-granting institutions enroll students without accreditation or federal aid.⁹

The variety of authorization and oversight standards across states is substantial. Authorization boards are typically housed in the state’s higher education executive office (commonly known as “SHEEOs”), and board composition is usually laid out in statute.¹⁰ Oversight for postsecondary institutions also connects to other mechanisms of state authority including workforce training processes, veterans program approval, occupational licensure, and non-degree private institution recognition. This complex system of oversight connects a web of federal programs and consumer protection. While SHEEO agencies often sit at the nexus of these authorities, the closure of an institution requires coordination and alignment across a variety of state boards and agencies.

Safeguards that fall under the jurisdiction of states, accrediting agencies, and the U.S. Department of Education will play a key role in facilitating students’ transition out of a closing institution. Accrediting agencies typically require institutions at risk of closure to develop a “teach-out plan,” which is designed to ensure that all students have a chance to complete their program and is defined in the federal regulatory code as requiring “equitable treatment of students” in the event of a closure.¹¹ In practice, however, institutions that close before all its students can complete their program cannot meet this standard until it reaches a teach-out *agreement* with another institution that can enroll its remaining students. Teach-out agreements are not always required by accreditors and are not defined in the Code of Federal Regulations.¹² Implementation of teach-out plans and agreements sometimes falls to states, as the state’s regulatory authority continues even after accreditation is forfeited or removed.

The availability of transcripts and records is especially critical for students who are continuing their education elsewhere or applying for a loan discharge. When an institution closes, there is a level of demand immediately placed on registrar offices to send students the records they need. In some instances, this has resulted in clerical mistakes or misplacement of transcripts.¹³ Other institutions have closed without designating another institution to manage student records. Some states have enacted resultant legislation that requires institutions to turn over transcripts as soon as they announce they are closing,¹⁴ while others have created a repository to guarantee that they are readily available.¹⁵

⁸ https://sheeo.org/wp-content/uploads/2019/07/SHEEO_StateAuth.pdf

⁹ <https://www.nber.org/papers/w17827.pdf>

¹⁰ http://www.ecs.org/wp-content/uploads/ECS_FundingReports_HarnischNassirianSaddlerColeman_F.pdf

¹¹ <https://www.govinfo.gov/content/pkg/CFR-2019-title34-vol3/xml/CFR-2019-title34-vol3-part600.xml#seqnum600.4>

¹² Note: A federal definition for “teach-out agreement” will be effective in 34 CFR § 600.2 on July 1, 2020

¹³ <https://www.chronicle.com/article/They-re-Not-Even-Making/246173>

¹⁴ https://www.ibhe.org/assets/files/IBHE_Thought_Paper_Closure.pdf

¹⁵ <https://www.defendstudents.org/news/body/quality-assurance/Student-Defense-Transcripts-Paper.pdf>

States may also require some institutions to set aside funds to protect students from financial harm in the event of a closure. This usually takes shape in the form of surety bonds or other “student protection funds.”¹⁶ Furthermore, almost all states require institutions to provide at least a partial refund to students who discontinue their education for a qualifying purpose or within a certain timeframe. These governance structures and policy elements – some of which are well within a governor’s purview – are especially pertinent as institutions confront financial peril and students face significant disruption to their education.

Policy Changes Governors Should Consider

States will play a critical role in protecting students as key regulators of higher education institutions. As governors prepare to play this outsized role, they should think about the enormous disruption that institutional closures often impose on students and their families and respond with policy changes that will minimize that disruption.

Re-evaluate and recalibrate state systems. As institutions of higher education face enormous uncertainty, states will need to meet the challenge with greater oversight.

- **Intentionally connect state oversight agencies/boards.** Governors can create mechanisms for state entities to share institutional information and to proactively monitor struggling institutions. Agencies/boards that provide oversight of veterans’ program approval, workforce eligible training provider lists, occupational licensure processes, and non-degree training providers can be aligned and coordinated to allow for collaborative regulation.
- **Enter monitoring mode.** As institutions transition rapidly to remote learning, the upheaval in the higher education system is not well understood. States should ask institutions to report when they go online, when they temporarily cease operations, and how their student enrollment is changing. Additionally, states should closely monitor incoming complaints – often a harbinger of larger problems related to quality or fraud – and refer them to accrediting agencies, other states, and the U.S. Department of Education as appropriate.
- **Strengthen state authorization processes.** States should prioritize oversight and enforcement of consumer protection laws and practices, particularly as institutions ramp up recruitment for their online programs. Student outcomes data available through the Education Department can provide good information on where agencies should begin their oversight efforts.

Identify institutions at the greatest risk of financial collapse. Institutions are facing potentially devastating revenue problems and significant unexpected costs, and states should determine which are most vulnerable.

- **Assess institutions’ current and likely financial status.** To effectively anticipate which institutions are most at risk of closure – a necessary precursor to ensuring those institutions do not leave students in the lurch if they do close – states should assess their finances. That includes reviewing the Education Department’s financial responsibility composite scores to understand preexisting financial circumstances; identifying institutions that are most dependent on tuition revenue; and asking institutions to regularly assess and report their cash-flow. States can also establish metrics to determine the financial stability of institutions operating in the state.

¹⁶ <https://www.aei.org/wp-content/uploads/2015/08/Inputs-Outcomes-Quality-Assurance.pdf>

Plan for possible closures. States should seek to ensure any permanent institutional closures are planned for and that students have a path to complete their programs.

- **Require teach-out plans and agreements from high-risk institutions.** While all institutions should be contingency planning for possible closures, those at the greatest risk of financial peril should be required to begin making teach-out arrangements with financially stable institutions.
- **Protect students following closure.** Governors should ensure teach-out plans include a records management plan that will provide students with transcripts and other key records, free of charge, in the event of a closure. States should also require that institutions provide students with clear information about their options for federal student loans and an application for closed school discharges if they plan to close.

Conclusion

States must take a leading role during this unparalleled time of financial uncertainty for institutions of higher education brought on by the COVID-19 crisis. Governors can proactively align systems and empower agencies to take the necessary steps to protect students caught up in institutional closure. Moreover, governors can help facilitate and amplify the arrangements made for students enrolled at a closing institution. These actions should include an evaluation of current consumer protection and authorization processes, as the issue of institutional closures will persist long after the COVID-19 crisis is over.

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