

# WALDEN UNIVERSITY

## Testimony of Walden University on SB 446 – Institutions of Postsecondary Education – Disorderly School Closures Position: Oppose

Walden University welcomes the opportunity to submit these written comments to raise concerns regarding SB 446. While we appreciate that the legislation includes all types of institutions of postsecondary education operating in the state—and fully support efforts to ensure financial stability safeguarding against precipitous closure—any legislation should aim to provide effective protections for students and align Maryland with existing federal measures that ensure institutional stability.

### Issues of Concern with the Legislation

#### **Ensuring Terminology Accurately Reflects Student Experience**

While the legislation refers to the terms “disorderly closure” and “close-out plan,” institutional accrediting bodies the U.S. Department of Education, and other state statutes and regulations already recognize the terms “precipitous school closure” and “teach-out plan.”

- Since many of the affected schools enroll students from many, if not all, other states, it’s important that the terminology align with the recognized standards.
- ‘Precipitous closure’ both accurately reflects the acute problem that this legislation seeks to address, namely that *sudden* school closure can shortchange students and taxpayers alike.
- Likewise, ‘precipitous closure’ as recognized under federal law, carries existing requirements and responsibilities, including submission of a letter of credit to the U.S. Department of Education.

At the same time, the term “teach-out”—rather than “close-out,” as used in the legislation—more accurately reflects the process that students *should* experience upon the closing of a postsecondary institution.

- Such closing institutions quite literally *teach out* their students—or arrange articulation agreements with other schools, allowing students to transfer their credits without penalty.
- Use of the term “close-out plan” implies that an institution is actually closing, much as consumers might fairly infer upon seeing the terms ‘close’ or ‘closing’ on a storefront.
- Requiring a “close-out” agreement not only sends a confusing message to students and others, but it risks damaging the reputation of Maryland institutions—counterproductive to legislative intent.

#### **Federal Rules to Require Institutions in Danger of Closing Submit Teach-out Plans to Accreditors**

As important context, Maryland should note that federal negotiators concluded a consensus rulemaking last spring on teach-out plans and agreements, related to school closures.

- That rulemaking included the State Higher Education Executive Officers Association (SHEEO), the national organization comprised of all state higher education agencies (*e.g.*, the Maryland Higher Education Commission, or MHEC).
- In addition to SHEEO representation, that rulemaking panel included two- and four-year public, nonprofit, and for-profit institutions of higher education, accrediting agencies, students, consumer advocacy organizations, legal assistance organizations that represent students, as well as financial aid, business, and admissions officers at postsecondary institutions.

In fact, federal negotiated rulemaking panels seldom reach consensus at the end of the process. It is, therefore, noteworthy that these new federal rules that take effect July 1, 2020, represent a comprehensive framework adopted in full collaboration among state higher education agencies, accreditors, students, and all categories of postsecondary institutions. Significantly, these rules now *require* teach-out plans after certain triggering events, including circumstances in which:

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- the U.S. Department of Education places a school on the reimbursement payment method, or the heightened cash monitoring payment method that requires the U.S. Department of Education to review the institution's supporting documentation
- the U.S. Department of Education initiates an emergency action against an institution
- an accreditor withdraws, terminates, or suspends the accreditation of an institution

**Accordingly, we urge the Committee to *instead* consider requiring any postsecondary institution whose accreditor requires the institution to submit a teach-out plan to *also* submit that plan to the Commission (MHEC) within ten (10) days of submission to the institution's accreditor.**

- As described above, the higher education community achieved broad consensus for a framework that enables Maryland and other states to benefit from the critical role of accrediting agencies in their quality assurance capacity.
- The carefully considered criteria outlined in the new federal rules provide clear and relevant *triggers* that demonstrate a need for schools to submit a teach-out plan.

Finally, the legislation requires "close-out plans" to include personal liability for the institution's Chief Executive Officer and members of the governing body.

- This is a strict liability standard with no consideration for occurrences beyond the reasonable control of an individual, known as *force majeure* in contracts law.
- Personal liability should only be ascribed to actions resulting from negligence or clear wrongdoing.
- There is already existing liability for Chief Executive Officers of postsecondary educational institutions under federal law.
  - In order to participate in Title IV programs (*i.e.*, federal financial aid funds), leaders of postsecondary institutions must sign Program Participation Agreements (PPA) binding them to liability that includes the possibility of significant fines or imprisonment.

## Background on Walden University

Walden University ("Walden") is an entirely online university, based in Minneapolis, Minnesota, serving more than 48,000 online students in the U.S., including approximately 3,100 students and 6,900 alumni in Maryland. Celebrating its 50th anniversary in 2020, Walden was founded to support working professionals in achieving their academic goals and making a greater impact in their professions and communities. With more than 85% of its students enrolled at the master's and doctoral degree levels, the university offers programs in education, counseling, management, psychology, public health, social work and human services, nursing, public administration, public policy, and technology.

The university offers more than 80 degree programs with over 350 specializations and concentrations. Walden is regionally accredited by the Higher Learning Commission ("HLC"), as well as by several specialized accrediting agencies. Walden includes four colleges of study with an emphasis on programs in nursing and health sciences, education, psychology, counseling and social work, public policy and administration, and management and technology.

Walden's student population is 49% minority and 76% female and has an average age of 40. Walden is proud to rank No. 1 for conferring graduate degrees to African American students and all minority students combined, according to *Diverse: Issues in Higher Education's* 2019 Top 100 Producers of Minority Graduate Degrees.

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Walden's Master of Science in Nursing (MSN) ranks No. 1 in Nursing graduates in the U.S.<sup>1</sup> Walden University is a Certified B Corporation®, which signifies that a company has met standards of social and environmental impact, accountability, and transparency assessed against the proprietary criteria established by B Lab®, an independent nonprofit organization. Walden employs 3,773 faculty and administrative staff, including over 300 in Maryland.

## Conclusion

Given the above concerns, we urge careful consideration of the terminology in this legislation and the value of building off the new federal rules for teach-out plans and agreements to ensure: (1) Maryland complements any federal statutes or regulations on precipitous closures and teach-out plans and agreements across higher education; and (2) to allow for Maryland to streamline its efforts to protect students in concert with federal law and the important work of institutional accrediting agencies as quality assurance bodies.

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<sup>1</sup> Source: National Center for Education Statistics (NCES) IPEDS database. Retrieved using the 51.38 CIP code group (Registered Nursing, Nursing Administration, Nursing Research and Clinical Nursing). Includes 2017-18 preliminary data.