Department for Education

FE College Financial Intervention and Exceptional Financial Support

Replaces the FE College Financial Intervention and Exceptional Financial Support Policy October 2015

September 2017

Contents

1. Introduction

This document sets out the steps DfE and the Education and Skills Funding Agency will take, in exceptional circumstances, to protect learner provision where a Further Education College declares that it is encountering financial, or cash flow, difficulties that put the continuation of provision at risk; and that it cannot resolve from its own resources or through arranging borrowing facilities.

1 ‘Rigour and Responsiveness in Skills’ (April 2013) sets out the Government’s commitment to creating a world-class network of skills providers. It noted that high quality is best achieved by strong, accountable leadership working in partnership with learners, employers and their communities. It also outlined Government approach to interventions in adult Further Education (FE) – which includes a trigger associated with failing financial health – making clear that protecting learner interests is the primary purpose of intervention.

2 ‘Reviewing post-16 Education and Training Institutions’ (July 2015) restated the importance of colleges tackling financial issues as a matter of urgency; and reminded Governing bodies of their critical role in the scrutiny of college finances; the identification of risk; and in putting in place a robust strategy to tackle financial decline. This policy statement also explained the Government’s intention to reform post-16 education and training institutions through a programme of Area Reviews. A key objective of Area Reviews was to ensure that FE Colleges are resilient going forward. The presumption is that following the implementation of Area Review recommendations, Exceptional Financial Support (EFS) will no longer be available to colleges.

3 This document sets out the steps DfE and the Education and Skills Funding Agency (ESFA) will take when a FE College declares that it is in financial difficulty and approaches the ESFA to seek exceptional financial support. It also sets out the approach when a FE College declares it cannot repay existing EFS; or where the ESFA has reason to believe a college’s financial position is unsustainable.

4 The approach applies to FE Corporations only. It does not extend to Sixth Form Colleges.

5 EFS will ONLY be made available where it represents the best use of public money to protect learner interests and secure policy outcomes.

6 This guidance may change from time to time.

2. The Financial Intervention and Exceptional Financial Support Policy

1. On an exceptional basis, limited support may be made available to help address:

   i. short and medium term financial weaknesses that cannot be addressed through normal commercial borrowing arrangements; through asset realisations; or through reductions in expenditure and increases in income;

   ii. the short term stability of a college while FE Commissioner led intervention is underway such as a Structure and Prospects Appraisal (SPA) or Financial Prospects Assessment (FPA) or before the implementation of Area Review recommendations; or

   iii. longer term actions which will deliver robust sustainable business models, good financial controls and strong resilience to change.

2. Exceptional Financial Support (EFS) is not intended to address or facilitate the implementation of the recommendations of Area Reviews. The implementation of Area Review recommendations can be facilitated through the Restructuring Facility. The guidance for the Restructuring Facility can be found here: https://www.gov.uk/government/publications/post-16-education-and-training-institutions-apply-for-financial-support-for-area-reviews.

3. EFS will normally be made available as short or medium term re-profiling of annual allocations of ESFA funding, or as Loans (see the section of this document headed “Types of Exceptional Financial Support”). In very limited circumstances where a FE college requires financial support but repayment of a Loan is not affordable at all, or within a period which is acceptable to DfE and the ESFA, limited and conditional grant support may be considered. Such a grant will be expressed to be repayable in certain circumstances.

4. Requests for EFS must be supported by thorough evidence of the need for the support; and will be subject to detailed review and scrutiny by ESFA, DfE and HM Treasury officials. Evidence may include, but is not limited to, the college’s financial accounts, financial forecasts, cash flow statements and projections and details of any previous external funding or loan agreements. Colleges should be aware that they need to carefully monitor and risk assess their cash flow forecasts to identify and resolve issues early.

5. Colleges should be aware that the analysis necessary to make decisions on requests for large amounts of public money cannot be undertaken hurriedly and should plan accordingly. Requests for EFS on an emergency or urgent basis will be regarded as indicative of a lack of financial management competence on

the part of the college concerned and Government will respond accordingly in order protect the taxpayers' interest.

6. Colleges should seek to address any financial weakness through normal commercial borrowing arrangements, disposal of assets, asset realisations and/ or through reductions in expenditure and increases in income.

7. Where the acquisition or development of a capital asset has been funded in whole, or part, by a grant from the ESFA, the ESFA may have a right to claw back some, or all, of the grant if the college disposes of the asset. Where a college proposes to raise funds by disposing of such an asset, and would otherwise need to request EFS, it should consult with the ESFA. The ESFA may consider a waiver (in whole or part) of its right to claw back the earlier capital grant. In such a case the ESFA will consider in the round how best to protect public funds, as well as taking into account the six principles set out in Annex C of this document. In order to allow such decisions to be taken effectively, it is, again, important that the college consults with the ESFA in sufficient time to allow proper consideration of the balance of factors which will arise.

8. Exceptional Financial Support (EFS) will only be considered when it is clear that the college, following full consideration by its Governing body, has exhausted all other options, including increasing income and reducing expenditure as well as realising assets and raising new commercial finance. DfE and the ESFA will require convincing evidence of this prior to EFS being given to the college.

9. All requests for EFS will be considered on a case-by-case basis, taking into account the principles set out in this document.

10. There should be no presumption or expectation that Government will provide 'emergency' financial support to colleges and, where colleges do submit a request for EFS, they should do so in the full knowledge of the seriousness of their financial situation; the possible consequences of such a request being submitted, including FE Commissioner intervention; and the impact that refusal might have on its continued operations. In every case colleges need to consider, and to be ready to explain to the ESFA, what steps they would take if financial support is refused.

11. The ESFA will also evaluate the financial health grade of a college in accordance with the published criteria. These can be found at: https://www.gov.uk/government/publications/financial-planning-handbook

12. Where a loan (or grant) is requested the ESFA will determine that the college's financial health is 'inadequate' which will then trigger a referral to the FE Commissioner.

13. Such intervention by the FE Commissioner, as set out in the FE College Intervention Strategy, may lead to changes in college governance and leadership, curriculum, and delivery models including new partnership arrangements with other colleges or providers. If the intervention identifies significant concerns over governance and leadership, along with concerns about the long term sustainability of the college, this could lead to the college being put into administered status.

14. The Secretary of State may also exercise statutory powers of intervention under the Further and Higher Education Act 1992, in circumstances where these powers are available.

15. Should DfE and ESFA conclude that an offer of Exceptional Financial Support (EFS) is appropriate; this offer will carry terms and conditions to protect public funds and make clear the purposes for which the funding can be used. Conditions are likely, for example, to include some or all of: changes in governance, changes in the senior management team, asset disposal, the pursuit of merger discussions or bringing in new expertise to the college, where necessary to protect public funds.

16. DfE will consider, on a case by case basis, whether a loan will be subject to interest charges and/ or security for the loan will be taken over college assets.

17. The offer will also set out the drawdown arrangements and the repayment profile of any loan, seeking to secure the earliest settlement, together with any implications associated with default of the college's obligations under the loan. The terms and conditions must be agreed and accepted by the college in advance of funding being given to the college.

18. Annex A provides an overview of the typical Exceptional Financial Support (EFS) process.

19. Annex B provides an overview of the typical Exceptional Financial Support (EFS) process where there is concern about a college's financial sustainability (and therefore their ability to repay EFS and/or to enter into a loan agreement).

3. Why is Financial Intervention and Exceptional Financial Support needed?

1. The Government recognises the important contribution that FE colleges make to skills and growth across the country and seeks to support a college sector which is characterised by high quality provision which is meeting the needs of learners and employers, and is underpinned by sustainable business models, strong financial controls and resilience to change.

2. With more funding moving directly into the hands of employers and learners, and a declining adult skills budget, there is less funding going directly to colleges. Many colleges have responded swiftly to these challenges, reviewing their business models to reduce costs and increase their income from apprenticeships, loans, fees and other sources. However, those colleges that have not responded so swiftly are showing serious signs of financial stress. The position could deteriorate over the short to medium term unless colleges take active steps to reduce their costs or secure additional income.

3. Where colleges have not taken sufficient active steps to address potential poor financial health or to adjust their business model in response to the changing economic environment, they have placed their existence at risk, along with the provision they offer to their learners, employers and the communities they serve. Exceptional Financial Support (EFS) is intended to safeguard learner provision by offering those colleges that have exhausted all other funding options (and that recognise the need for change) an opportunity to move on to a sustainable footing.

4. The Principles for Financial Intervention and Exceptional Financial Support Funding

1. A set of principles has been developed to guide Government financial intervention in and support for colleges that become unable to support or sustain themselves. All intervention including requests for Exceptional Financial Support (EFS) will be evaluated against a framework of six key principles.

2. These principles are:

   I. protection of the taxpayer from excessive or unnecessary expenditure or future liabilities;

   II. protection of high quality and relevant education and training to meet the needs of local learners and employers;

   III. that future provision of education and training is determined on an area-wide basis rather than from a single institution's perspective, with options explored openly and transparently, and with analysis to be publicly available of both the current and future economic and educational need and the current education and training provision;

   IV. that provision must represent value for money, be financially viable and delivered through financially sustainable institutions;

   V. that providers taking on existing providers or provision and some or all of the related assets will assume all or an appropriate share of the associated costs and liabilities; and

   VI. that the Secretary of State has no obligation to assume, discharge or provide funding for the liabilities of an institution which is dissolving or in financial difficulty, but might decide to do so in particular cases, to protect learners or secure outcomes, or otherwise in the public interest.

3. More detail on these principles is provided at Annex C.

5. Types of Exceptional Financial Support

1. There are three main types of Exceptional Financial Support (EFS)

I. **Short Term Re-Profiling**: This applies to short term cash flow issues - where exceptional financial support EFS is required for a period of 3 months or less and is normally for 40% or less of the college's annual allocation of ESFA funding.

   Support of this kind will be considered where a college requires a re-phasing of its "in year" ESFA allocation to deal with a short term cash-flow issue e.g. arising from a delay in the receipt of funds coming through from the sale of an asset. The re-phasing will involve an increase to a college's payment in one month with an expectation of repayment through reduced profiled payments within the following three months.

   Such a request would be subject to ESFA financial review and assessment with careful consideration given to the issuing of a Notice to Improve and the need for FE Commissioner intervention. If, following assessment, the ESFA judges the college to be otherwise financially sound, a Notice to Improve would not automatically be issued and intervention would not be considered at this point.

   The ESFA will, however, raise the college's risk rating and will review the college's financial position on a monthly basis. The ESFA has the option to extend the duration of support up to a maximum period of 12 months. Where a Notice to Improve has not been issued, ESFA reserves the right to issue such a notice if, upon review, it finds that financial circumstances have changed, and to re-consider the need for intervention.

II. **Medium-term Re-Profiling**: This applies where a college requires longer than three months to manage the repayment of an increased profile payment, but where this will be managed within 12 months and is normally for 40% or less of the college's annual allocation of ESFA Funding.

   As described in (i) above, such a request would be subject to ESFA financial review and assessment with careful consideration given to the issuance of a Notice to Improve. Where a Notice to Improve is not issued, ESFA will raise the college's risk rating and review the college's financial position on a monthly basis. Where a Notice to Improve is issued and the college's financial health is assessed as 'inadequate', FE Commissioner intervention will be considered in accordance with the Intervention policy.

III. **Loans for longer-term financial issues**: where it is clear that full repayment could not be made within 12 months and where ESFA and DfE are satisfied that the college has a robust plan to repay the loan in accordance with its terms (and to comply with any other terms).

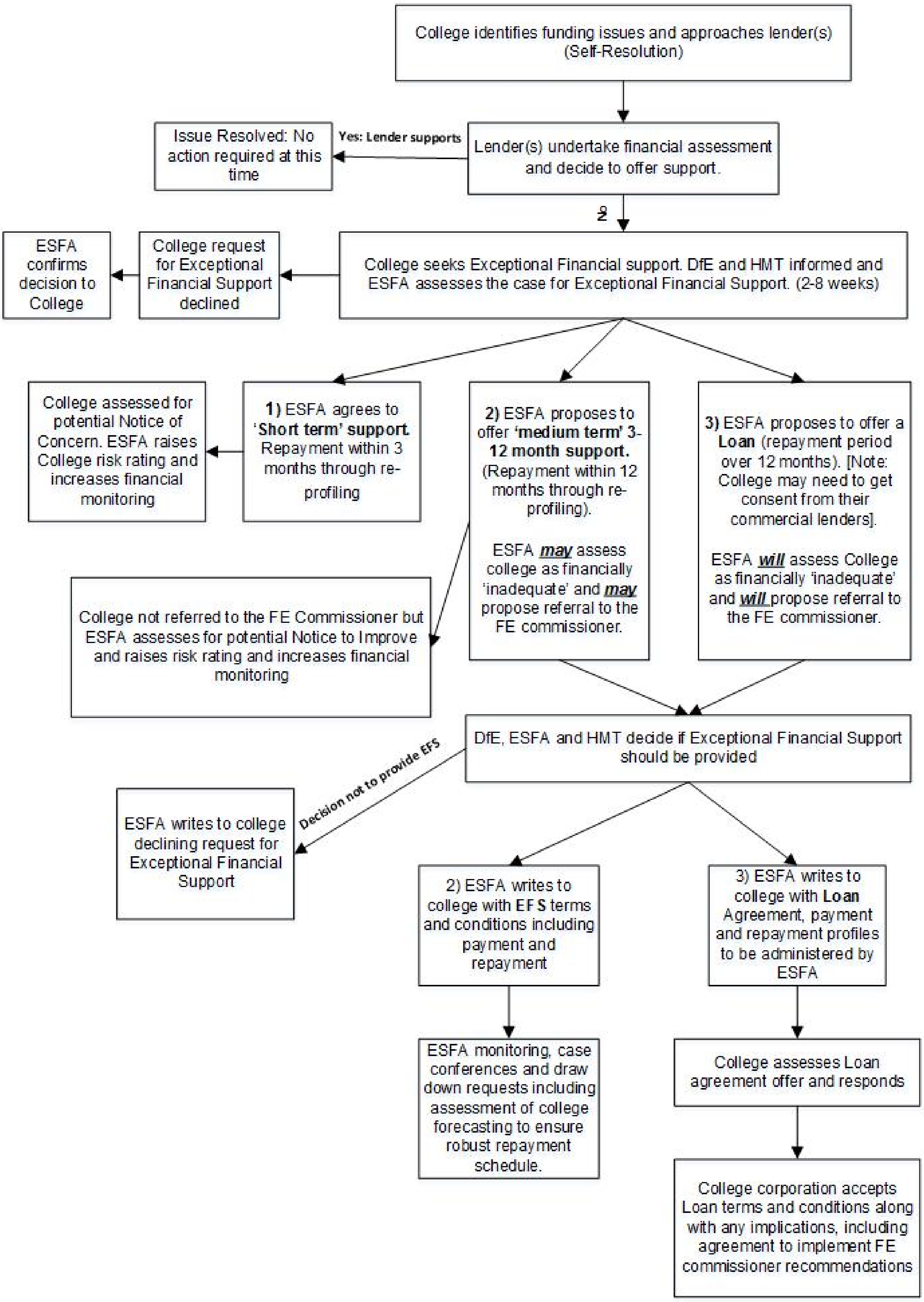
Where such a request for support is received, a Notice to Improve will be issued, the college’s financial health will be assessed as ‘inadequate’ and FE Commissioner intervention will be commissioned. Funds will usually only be made available to implement actions from an FE Commissioner review, for instance it may be appropriate to provide loans to a college to deliver a rapid recovery plan.

It is a condition of providing Exceptional Financial Support (EFS) that all monies, including Loans, will be repaid at the earliest opportunity. As such, the terms of any loan and repayment period will be decided on a case by case basis.

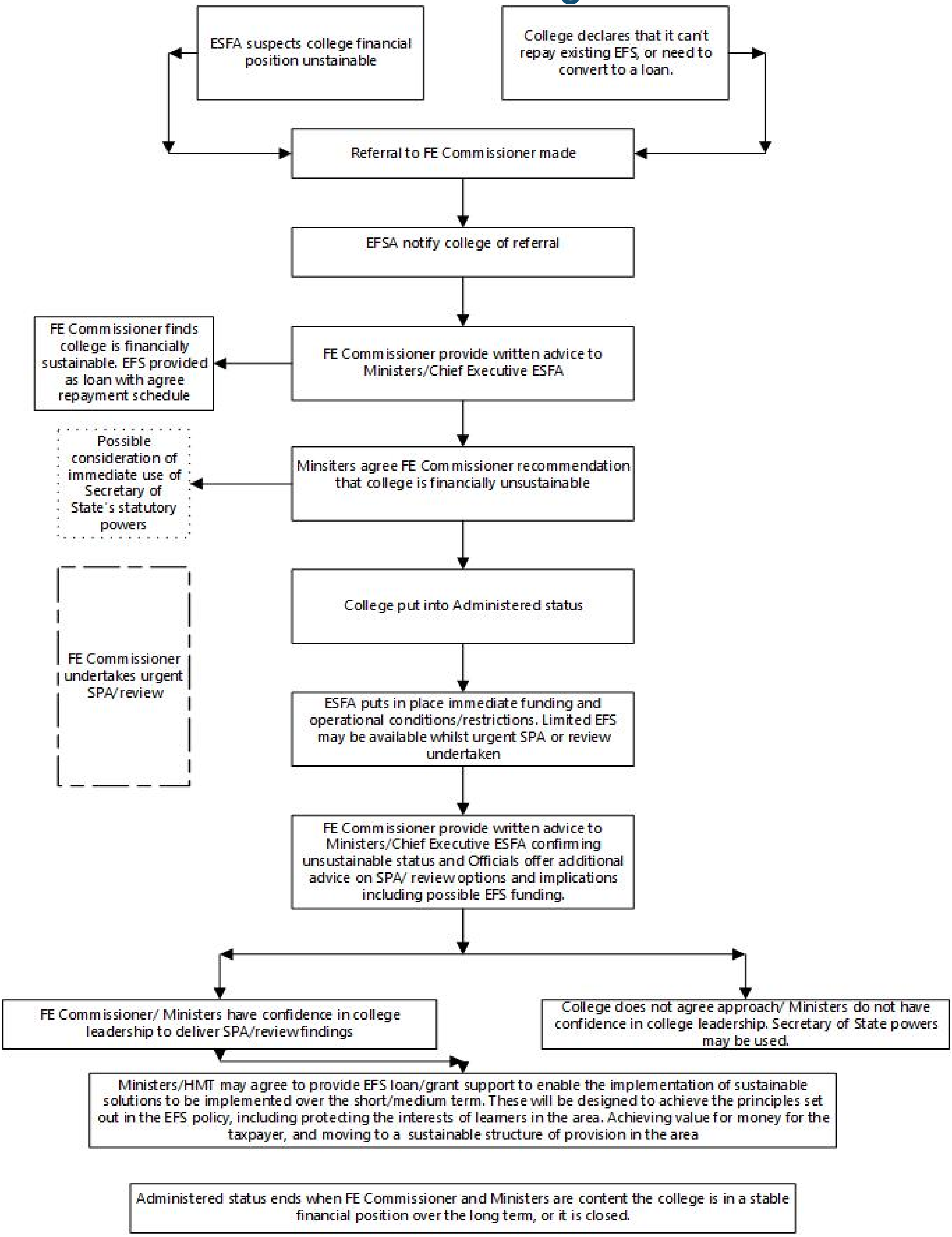
2. In exceptional circumstances, if a college is identified as being unsustainable and unable to repay a Loan, urgent action will follow which seeks to safeguard learners, protect public funds and find new or alternative delivery models. This will involve the college being placed into administered status and consideration of limited and conditional grant support being provided while cost effective solutions are explored.

3. The objective of any grant would be to protect learners and public funds, not the institution receiving the grant. It is unlikely that a college, which requires funding by way of exceptional grant, will be suitable for funding by the ESFA in the long term without significant change being delivered such as the implementation of an Area Review recommendation.

Annex A: Exceptional Financial Support/Loans Process



Annex B: Exceptional Financial Support/Loans Process for Unsustainable Colleges



Annex C: The Principles for Financial Intervention and Exceptional Support Funding

The Principles

All requests for Financial Intervention and Exceptional Financial Support will be considered against a framework of six key principles. These are:

(i) protection of the taxpayer from excessive or unnecessary expenditure or future liabilities;

(ii) protection of high quality and relevant education and training to meet the needs of local learners and employers;

(iii) that the future provision of education and training will be determined on an area-wide basis rather than from a single institution's perspective, with options explored openly and transparently, and with analysis to be publicly available of both the current and future economic and educational need and the current education and training provision;

(iv) that provision must represent value for money, be financially viable and delivered through financially sustainable institutions;

(v) that providers taking on existing providers or provision and some or all of the related assets will take on all or an appropriate share of the associated costs and liabilities; and

(vi) that the Secretary of State has no obligation to assume, discharge or provide funding for the liabilities of an institution which is dissolving or in financial difficulty, but might decide to do so in particular cases, to protect learners or secure outcomes, or otherwise in the public interest.

Additional comments on the principles

(i) Protection of the taxpayer from excessive or unnecessary expenditure or future liabilities

This means that the scale of expenditure needs to be fully justified and proportionate. Large scale write-offs or capital expenditures should not be made where numbers of learners benefitting are small, for example, costly new builds for small, financially at-risk institutions, or to continue to deliver learning in uneconomical class sizes.

Wherever possible assets should be realised or other funding raised in order to discharge liabilities – new public money should be provided ONLY as a last resort.

Payments (of new public money) will be staged so that money is not available in advance of need; and subject to claw back if the need for all, or part, of the funding does not arise.

The taxpayer should expect spend to be on a “once and for all basis” rather than a succession of short-term fixes. In particular there should be a presumption that, once an Area Review recommendation has been implemented, there should not be a further need for Exceptional Financial Support (EFS) for the colleges concerned.

(ii) Protection of high quality and relevant education and training to meet the needs of local learners and employers

This means a presumption that intervention and investment will protect provision of proven high quality as demonstrated by inspection, performance and outcome data including destinations and measures of learner and employer satisfaction, and demonstrably relevant to local needs.

This also means that support may not be available to institutions where quality is weak or with no track record of positive impact.
This principle does not mean that institutions providing high quality education and training will be protected regardless of their financial position.

(iii) The future provision of education and training will be determined on an area-wide basis rather than from a single institution’s perspective, with options explored openly and transparently, with full analysis publicly available of both the current and future economic and educational need and the current education and training provision

This means institutions will not enter into opaque arrangements with preferred partners, but use Area Review recommendations to ensure that options are driven by analysis and data, with an expectation that this information will be published as the norm.

(iv) Provision must represent value for money, be financially viable and delivered through financially sustainable institutions

In practice this means that intervention and expenditure must address underlying financial problems, through, for example, rigorously assessing projected income assumptions and imposing reasonable conditions for support e.g. targets for staff/total costs ratios in line with benchmark norms, ongoing assurance over calibre of financial management and governance.

(v) Providers taking on existing providers or provision and some or all of the related assets will take on an appropriate share of the associated costs and liabilities

This principle provides scope for new providers taking on existing provision including the transfer of liabilities to a new, or merged, provider in circumstances where that provider is no less able to discharge the liability (than the original provider).

(vi) the Secretary of State has no obligation to assume, discharge or provide funding for the liabilities of an institution which is dissolving or in financial difficulty, but might decide to do so in particular cases to protect learners or secure outcomes, or otherwise in the public interest.

This principle makes it clear that the Secretary of State has no obligation to meet the liabilities of a college which gets into financial difficulty or faces closure.

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