



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 8, 2011

Ms. Margaret Smith  
Program and Student Support Services  
Commerce and Information Technology  
Career/Technical Education  
Alabama Department of Education  
P.O. Box 302102  
Montgomery, AL 36130

Dear Ms. Smith:

This letter is in response to your letter on May 31, 2011 (supplemented by additional information provided on June 13, June 20, June 24, June 27, and June 29, 2011) in which the State of Alabama requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time taken to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide support for higher education that is equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) Program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Department is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for the nation's institutions of higher education.

Alabama has provided data indicating that the State provided \$1,276,807,466 in support for public institutions of higher education in State fiscal year (SFY) 2010, \$158,154,763 less than the average amount it provided during the preceding five State fiscal years (SFY 2005 – SFY 2009) – a reduction of 11.02 percent. During the same year, the State provided \$3,587,047 in support for financial aid for students attending private institutions, \$135,764 more than the average amount it provided during the preceding five State fiscal years – an increase of 3.93 percent.

Alabama's May 31, 2011 letter to the Department cited the "impact of the downturn in our nation's economy that was felt by all and the effect on the economy and therefore the budgets of Alabama from the oil spill in the Gulf of Mexico." Alabama's total State revenues decreased by 9.12 percent in SFY 2010 from the preceding five-year average (SFY 2005 – SFY 2009). In addition, total State appropriations decreased by 8.44 percent from the preceding five-year period.

In considering all of the information provided, we have determined that it would not be equitable to grant a waiver to the State under section 137(c) of the HEA. While we recognize that the State faced a difficult financial situation in SFY 2010, in determining whether granting a waiver would be equitable, we considered the fact that the reduction in support for public institutions of higher education (11.02 percent) was greater than the percentage declines in total State appropriations (reduced 8.44 percent) and total State revenue (reduced 9.12 percent) from the preceding five-year average.

When a State fails to maintain State financial support at the level required by law, section 137(d) the HEA directs that the "Secretary shall withhold...any amount that would otherwise be available to the State...until such State has made significant efforts to correct the violation." At this time, Alabama cannot receive an award for Federal fiscal year (FFY) 2011 under the CACG program because it has not met the maintenance of effort requirement related to State support for public institutions of higher education nor received a waiver of that requirement. However, should the State make significant efforts to correct the violation, the Department will allow the State to receive its full FFY 2011 award in the CACG program.

Recognizing that the State faced a reduction in State revenue that precipitated a reduction in total State appropriations, the Department will not require the State to fully restore the \$158,154,763 shortfall receive its FFY 2011 award under the CACG program. Instead, we have determined that the State must make available an additional \$36,973,475 in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) – the amount needed to bring reductions in State support for public institutions of higher education (reduced 11.02 percent) in line with reductions in overall appropriations (reduced 8.44 percent) – to meet the standard of "significant efforts" set out in the HEA. If Alabama makes these additional funds available, these funds would be counted as SFY 2010 support for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

The Department understands that the State may need additional time to make these funds available. As such, if the State submits an assurance signed by the Governor of its intent to provide such support within 12 months, the Department will grant the State a year to provide this additional support. If the Department receives such an assurance by September 26, 2011, the Department will obligate the State's FFY 2011 CACG award but place a hold on drawdown of the funds until the State provides the Department with evidence that the additional support has been provided. If no assurance is provided, the Department will not obligate the State's FFY 2011 CACG award and the State may reapply for CACG funding in FFY 2012, at which time the

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State will need to provide evidence that it has met the maintenance of effort obligations under section 137(a) of the HEA for SFY 2011.

The Department retains the right to conduct an audit or otherwise review your records pertaining to all CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirements and the CACG grants as required by 34 C.F.R. §80.42.

If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

February 9, 2012

Dr. Thomas R. Bice  
State Superintendent of Education  
Alabama Department of Education  
Gordon Persons Building  
P.O. Box 302101  
Montgomery, AL 36130-2101

Dear Dr. Bice:

Thank you for the State's letter of September 23, 2011 (supplemented by additional information on September 26, October 12, October 13, and November 15, 2011), in which the State of Alabama provided information in support of its request that the U.S. Department of Education (the Department) reconsider its September 8, 2011 decision to deny the State's request for a waiver of the maintenance of effort requirements in section 137 of the Higher Education Act of 1965, as amended (HEA). We appreciate the time staff took to compile this information and its responsiveness to the Department's concerns.

In the State's original waiver request of May 31, 2011, and in supplemental information provided to support that request, the State provided data indicating that, in State fiscal year (SFY) 2010, the State made available \$1,276,807,446 in support for public institutions of higher education, \$158,154,763 less than it did, on average, during the preceding five year period (SFY 2005 – SFY 2009) – a reduction of 11.02 percent. In that year, Alabama's total State revenues decreased by 9.12 percent and total State appropriations decreased by only 8.44 percent. Based on this analysis, the Department denied the State's request for a waiver under section 137(c) of the HEA.

In conference calls on September 22, 23, and 26, 2011, and in the State's letter of September 26, 2011, the State raised concerns with the Department's analysis. Specifically, the State indicated that (1) the General Fund was unavailable to be expended on education and, therefore, should have been excluded from the Department's analysis, (2) the reductions in State support were the result of mid-year pro-rations in appropriations as a result of the April 2010 oil spill in the Gulf of Mexico, which were not taken into account by the Department, and (3) K-12 spending was unable to absorb reductions in funding because of the disproportionately large share of the appropriation that funds teacher salaries. Furthermore, in a conference call on November 7, 2011 and in the State's letter of November 15, 2011, the State requested that the Department exclude required local matching funds in the State's Foundation Program from its analysis, as these are not State revenues.

The Department notes that the State of Alabama has two major, and separate, funds that it uses to finance the majority of State activities – the General Fund and Education Trust Fund. While the State indicates that the General Fund is separate from the Education Trust Fund and unavailable for expenditures on education, the Department notes that, in the State’s calculation of its support for higher education in its letter of November 15, 2011, the State includes support from the General Fund to the Alabama University System and Montevallo University in SFY 2006 and SFY 2007. As such, because the State has used funds from the General Fund in its calculation of State support, the Department has determined that it is appropriate to include the General Fund in its analysis of State financial resources. The Department’s position is that all resources available to the State must be considered in determining whether the State faced circumstances that prevented it from maintaining effort, regardless of whether the State would prefer to rely, as a matter of policy, or has relied, as matter of practice, on a more limited source of revenue to fund higher education.

The State further argued that reductions in support for higher education were the result of mid-year pro-rations of the Education Trust Fund (ETF) caused, in part, by the oil spill in the Gulf of Mexico in April 2010. The State’s letter of September 26, 2011 includes information on five separate pro-rations of the ETF, four of which occurred during the time period under consideration for this waiver request (SFY 2005 – SFY 2010). Those pro-rations occurred in December 2008, July 2009, September 2009, and September 2010. Only the September 2009 and September 2010 pro-rations affected appropriations in SFY 2010. The September 2009 pro-ration, before SFY 2010 began on October 1, 2009, reduced State appropriations for the ETF by 7.5 percent. The September 2010 pro-ration expanded this reduction to 9.5 percent. The Department recognizes that the State faced difficult financial circumstances in SFY 2010 that necessitated a reduction in appropriations, but the State has failed to establish that it – at any time prior to these pro-rations – made sufficient funds available to meet the requirements of section 137(a) of the HEA or that it had treated higher education equitably in the budget process.

The State also noted that, because 87.9 percent of the State appropriation for K-12 education was expended for salaries and benefits, K-12 education was less able to absorb reductions in funding during the State budget process. The State argues that “higher education operates under a different system and has more flexibility.” However, the HEA statutory requirement for States to maintain effort does not allow for reductions in spending where it can be argued that cuts in spending for higher education could be more readily absorbed than cuts in other programs. The key question is whether the State had the financial capacity to maintain support for higher education, and whether the State accorded higher education equitable treatment in the budget process, not whether one program or another was more able to absorb reductions in funding.

Finally, the State asked the Department to deduct required local matching funds from the State’s Foundation Program from its calculations of State financial resources. Data from the State indicate that revenues from these funds increased 41 percent from SFY 2005 to SFY 2010. In a conference call on November 7, the State indicated that local jurisdictions are required to assess property taxes of at least a minimum millage. While these funds are assessed locally, they are appropriated by the State. Furthermore, the State’s required contribution to the Foundation

Program decreases as local revenues increase. As such, ignoring these funds in our analysis would give a distorted picture of the State's financial resources.

Furthermore, the State included these funds in its calculation of State support for special education and related services and in its statement of financial resources in its request for a waiver of the maintenance of effort requirements under the Individuals with Disabilities Education Act, as amended (IDEA). Therefore, we believe that it would be inappropriate to ignore these funds in our analysis of the State's financial resources in this waiver request.

The Department has thoroughly reviewed all of the information provided in your letters and has determined that there is no basis to change our decision to deny Alabama's request of a waiver of the maintenance of effort requirements of section 137 of the HEA. As such, the findings in our letter of September 8, 2011 stand.

Since Alabama failed to meet the maintenance of effort requirements in section 137(a) of the HEA and has not received a waiver of those requirements, the State will not receive its FFY 2011 award under the College Access Challenge Grant (CACG) Program. If, in accordance with section 137(d) of the HEA, the State makes significant efforts to correct the violation, the Department will allow the State to receive its FFY 2011 award under the CACG Program. The Department has determined that Alabama must make available an additional \$36,973,475 in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) in order to meet this standard.

Moreover, as outlined in the Department's September 8, 2011 letter, if the State submits an assurance, signed by the Governor, of its intent to provide additional financial support, the Department will continue to hold the State's FFY 2011 funding under the CACG Program until September 30, 2012. The State will be permitted to draw down these funds when it provides acceptable evidence that additional support has been provided. If no assurance is received from the State by March 15, 2012, the Department will de-obligate FFY 2011 CACG funds and the State may reapply for CACG funding in FFY 2012.

If you have questions regarding this information, you may contact Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or [debra.saunders-white@ed.gov](mailto:debra.saunders-white@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa

cc: Dr. Craig Pouncey, Alabama Department of Education, Deputy State Superintendent of Education, Division of Administrative and Financial Services



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 2, 2011

Ms. Debra Raeder-Gay  
Associate Director of the State of Arizona  
Governor's Office of Education Innovation  
1700 W. Washington, Suite 300  
Phoenix, AZ 85007

Dear Ms. Raeder-Gay:

This letter is in response to your letter dated May 16, 2011 (supplemented by additional information provided on June 14 and June 22, 2011) in which the State of Arizona requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time your staff took to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide support for higher education that is equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) Program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Department is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for higher education.

Arizona provided data indicating that total State revenue decreased by 16.28 percent in State fiscal year (SFY) 2010 from the preceding five-year average (SFY 2005-SFY 2009). As indicated in the request, the State reduced financial support for public institutions of higher education by \$61,191,280 in SFY 2010 compared to the preceding five-year average – a reduction of 5.80 percent. Additionally, in FY 2010, the State increased support for financial aid for students attending private institutions by 14.30 percent. The reduction in support for public institutions of higher education (5.80 percent) was smaller than the percentage reduction in overall State appropriations (7.26 percent) and the reduction in revenue (16.28 percent) from the preceding five-year average.

In considering all of the information provided by the State, we believe that the State of Arizona faced a difficult financial situation in SFY 2010. While it is regrettable that the State cut support for public institutions of higher education, we recognize that this reduction in support was relatively small compared to the cuts in State appropriations overall and the reduction in revenue. Accordingly, we have determined that it is equitable to grant a waiver under section 137(c) of the HEA due to exceptional or uncontrollable circumstances – the precipitous and unforeseen decline in the financial resources of the State.

Accordingly, the Department will provide Arizona with its Federal fiscal year 2011 award under the CACG program. The Department retains the right to conduct an audit or otherwise review your records pertaining to all CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirements and the CACG grants as required by 34 C.F.R. §80.42.

We appreciate your commitment to higher education and look forward to continued collaboration on its behalf. If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 22, 2011

Ms. Maureen Laffey  
Delaware Department of Education  
John G. Townsend Building  
401 Federal Street, Suite 2  
Dover, DE 19901

Dear Ms. Laffey:

This letter is in response to your July 6, 2011 letter (supplemented by additional information provided on July 20, 2011 and July 28, 2011) in which the State of Delaware requests a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time taken to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide support for higher education in an amount equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). A State that does not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) program authorized by section 781 of the HEA, 20 U.S.C. §1141. The U.S. Department of Education (Department) is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for higher education.

Delaware has provided data indicating that the State provided \$220,000,100 in support for public institutions of higher education in State fiscal year (SFY) 2010, which was \$1,224,113 less than the average amount it provided during the preceding five State fiscal years (SFY 2005 – SFY

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<sup>1</sup> When providing data to the Department, Delaware provided information on operational support for public institutions both including and excluding debt service. To obtain the total support for public institutions of higher education provided by the State in each of State fiscal years 2005 through 2010, the Department summed operational support for public institutions, excluding debt service, and financial aid made available for students attending public institutions.

2009) – a reduction of 0.55 percent.<sup>1</sup> Data from Delaware also indicate that the State made \$312,825 in support for financial aid for students attending private institutions of higher education in SFY 2010, \$432 more than the average amount provided during the preceding five State fiscal years – an increase of 0.14 percent .

Delaware's total State revenues increased by 2.10 percent in SFY 2010 from the prior five-year average and total State appropriations increased by 1.98 percent in SFY 2010 from the prior five-year average. Even though the State's revenues and total appropriations increased from the prior five-year averages, Delaware provided 0.55 percent less for public institutions of higher education in SFY 2010, compared to the prior five year average. Additionally, the State provided data indicating that total State revenues exceeded total State appropriations by \$143,565,700 in SFY 2010, an amount well beyond the amount necessary to maintain the State's required level of financial support for higher education in that year. Delaware's data established that the State had the financial resources available to meet the requirements of section 137 of the HEA and did not do so.

In considering all the information provided, we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2010 that prevented it from meeting its obligations under section 137(a) of the HEA. Accordingly, we have determined that it would not be equitable to grant a waiver under section 137(c) of the HEA.

When a State fails to maintain State financial support at the level required by law, section 137(d) of the HEA directs that the "Secretary shall withhold...any amount that would otherwise be available to the State...until such State has made significant efforts to correct the violation." At this time, Delaware cannot receive an award for Federal fiscal year (FFY) 2011 under the CACG program because it has not met the maintenance of effort requirements nor received a waiver of those requirements. However, should the State make significant efforts to correct the violation, the Department will allow the State to receive its full FFY 2011 award in the CACG Program.

Because we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2010 that prevented it from maintaining its required level of support under section 137(a) of the HEA, the Department had determined that the State must make an additional \$1,224,113 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) – the amount need to fully restore State reductions in support for higher education in SFY 2010 – to meet "significant efforts" standards set out in the HEA. If Delaware makes these additional funds available, these funds would be counted as SFY 2010 expenditures for purposes of calculating the State's future maintenance of effort obligations under the HEA.

The Department understands that the State may need additional time to make these funds available. As such, if the State submits an assurance, signed by the Governor, of its intent to provide such support within 12 months, the Department will grant the State a year to provide this additional support. If the Department receives such an assurance by September 26, 2011, the

Department will obligate the State's FFY 2011 CACG award but place a hold on drawdowns of the funds until the State provides the Department with evidence that the additional support has been provided. If no assurance is provided, the Department will not obligate the State's FFY 2011 CACG award and the State may reapply for CACG funding in FFY 2012, at which time the State will need to provide evidence that it has met the maintenance of effort obligations under section 137(a) of the HEA for SFY 2011.

The Department retains the right to conduct an audit or otherwise review the State's records pertaining to prior CACG awards. Therefore, please retain all records relating to the maintenance of effort requirement and the CACG awards as required by 34 C.F.R. §80.42.

If you have questions regarding this information, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

October 7, 2011

Ms. Karen Field Rogers  
Associate Secretary  
Financial Reform and Resource Management  
Delaware Department of Education  
The Townsend Building  
401 Federal Street, Suite 2  
Dover, DE 19901-3639

Dear Ms. Rogers:

Thank you for your September 28, 2011 letter in response to the U.S. Department of Education's (Department) letter of September 22, 2011, in which the Department denied Delaware's request for a waiver of the maintenance of effort requirements of section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f.

In your September 28 letter, you indicated that Delaware wishes to count \$15,873,000 of State Fiscal Stabilization Funds (SFSF), made available to the State under the American Recovery and Reinvestment Act of 2009 (ARRA), as State fiscal year (SFY) 2010 expenditures for the purposes of meeting the maintenance of effort requirements of section 137 of the HEA. You further indicated that these funds were not used for capital expenses or research and development costs. In a communication dated October 4, 2011, the State indicated that it only wishes to count \$1,224,113 of SFSF as SFY 2010 expenditures.

The Department has reviewed your request and, under the authority in section 14012 of the ARRA, will permit the State to count these SFSF funds as SFY 2010 expenditures for purposes of determining the State's compliance with the maintenance of effort requirements in section 137 of the HEA. By including these SFSF funds, the State has met the maintenance of effort requirements under section 137(a) of the HEA in State fiscal year 2010 and, therefore, does not require a waiver of those requirements to receive funds under the College Access Challenge Grant (CACG) Program in Federal fiscal year (FFY) 2011. We will now allow the State to draw down its full FFY 2011 award in the CACG Program. The Department considers this issue resolved.

As outlined in the Department's September 22, 2011 letter, the State will be required to count the SFSF funds discussed above as SFY 2010 expenditures in future years when calculating its obligations under section 137(a) of the HEA.

The Department appreciates Delaware's efforts to resolve its maintenance of effort issue, and we look forward to working with you to increase college access and success for underprivileged students.

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 8, 2011

Anthony G. Girardi, Ph.D.  
Statistical Research Analyst  
Iowa College Student Aid Commission  
603 E. 12th Street, 5th Floor  
Des Moines, IA 50319-9017

Dear Dr. Girardi:

This letter is in response to your May 25, 2011 letter (supplemented by additional information provided on June 10 and June 16, 2011) in which the State of Iowa requests a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time staff took to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide funding for higher education in an amount equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). A State that does not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Secretary of Education may waive these requirements for a State, for one fiscal year at a time, if he determines that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for higher education.

Iowa has provided data indicating that the State provided \$659,443,091 for public institutions of higher education in State fiscal year (SFY) 2010, which was \$35,544,093 less than the average amount it provided over the preceding five State fiscal years (SFY 2005 – SFY 2009) – a reduction of 5.11 percent. During the same year, Iowa made \$54,804,794 available for financial aid for students attending private institutions of higher education, which was \$3,589,640 less than the average amount it provided over the preceding five State fiscal years – a reduction of 6.15 percent.

Iowa's total State revenues increased by 0.69 percent in SFY 2010 from the preceding five-year period. Iowa's total State appropriations decreased by 1.36 percent in SFY 2010 from the prior

five year average. However, data submitted by the State also indicate that total State revenues exceeded total State appropriations by \$329,132,778 in SFY 2010, an amount well beyond the amount necessary to maintain the State's required level of financial support for higher education in SFY 2010. While we recognize that the total State appropriations decreased, Iowa's data establish that the State had the financial resources available to meet the requirements of section 137 of the HEA and did not do so.

In considering all of the information provided, we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2010 that prevented it from meeting its obligations under section 137(a) of the HEA. Accordingly, we have determined that it would not be equitable to grant a waiver under section 137(c) of the HEA.

When a State fails to maintain State financial support at the level required by law, section 137(d) of the HEA directs that the "Secretary shall withhold...any amount that would otherwise be available to the State...until such State has made significant efforts to correct the violation." At this time, Iowa cannot receive an award for Federal fiscal year (FFY) 2011 under the CACG program because it has not met the MOE requirements nor received a waiver of those requirements. However, should the State make significant efforts to correct the violation, the Department will allow the State to receive its full FFY 2011 award in the CACG program.

Because we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2010 that prevented it from maintaining its required level of support under section 137(a) of the HEA, the Department has determined that the State must make an additional \$35,544,093 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and \$3,589,640 available in support for financial aid for students attending private institutions of higher education – the amounts needed to fully restore State reductions in support for higher education in SFY 2010 – to meet the standard of "significant efforts" set out in the HEA. If Iowa makes these additional funds available, these funds would be counted as SFY 2010 funds for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

The Department retains the right to conduct an audit or otherwise review your records pertaining to prior CACG awards. Therefore, please retain all records relating to the maintenance of effort requirements and the CACG awards as required by 34 C.F.R. §80.42.

If you have questions regarding this information, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 22, 2011

Ms. Karen Misjak  
Executive Director  
Iowa College Student Aid Commission  
603 E. 12<sup>th</sup> Street, 5<sup>th</sup> Floor  
Des Moines, IA 50319-9017

Dear Ms. Misjak:

Thank you for your letter of September 13, 2011 in which you asked the U.S. Department of Education (Department) to reconsider the decision outlined in our letter of September 8, 2011 to deny Iowa's request of a waiver of the maintenance of effort requirement of section 137 of the Higher Education Act of 1965, as amended (HEA) and provided information to support your request. We have thoroughly reviewed the information provided in your letter and have determined that there is no basis to change our decision to deny Iowa's request of a waiver of the maintenance of effort requirements of section 137 of the HEA.

As discussed in our letter of September 8, 2011, in State fiscal year (SFY) 2010, total State revenues increased over the prior five-year average and exceeded total State appropriations by \$329 million, a sufficient amount of funding to maintain fiscal support of higher education as required by the HEA. Your letter notes that these funds were deposited into various accounts at the close of SFY 2010. However, the availability of these funds for deposit into other accounts was, in part, a function of the State's reduction in support for higher education. As the Iowa Department of Management has certified the data that indicate sufficient excess revenue funds were available for appropriation in SFY 2010 to meet the State's obligations under the HEA, the Department has determined that the State did not face an exceptional or uncontrollable circumstance in that year that prevented the State from meeting the maintenance of effort requirements of section 137 of the HEA. Therefore, the Department will not change its decision to deny the State's waiver request.

As indicated in the Department's letter of September 8, 2011, because the State failed to meet the maintenance of effort requirements of section 137(a) of the HEA and has not received a waiver of those requirements, the State will not receive its Federal fiscal year (FFY) 2011 award under the College Access Challenge Grant (CACG) Program. If, in accordance with section 137(d) of the HEA, the State makes significant efforts to correct the violation, the Department will allow the State to receive its FFY 2011 award under the CACG Program. The Department has determined that Iowa must make available an additional \$35,544,093 in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and \$3,589,640 in support for financial aid for students attending private institutions of higher education.

Moreover, as outlined in the Department's September 8, 2011 letter, if the State submits an assurance, signed by the Governor, of its intent to provide this additional financial support with 12 months, the Department will allow the State a year to provide this additional funding. If the Department receives such an assurance by September 26, 2011, the Department will obligate the State's FFY 2011 CACG award but place a hold on drawdown of the funds until the State provides the Department with evidence that the additional support has been provided. If no assurance is received from the State, the Department will not obligate the State's FFY 2011 CACG award and the State may reapply for CACG funding in FFY 2012.

If you have questions regarding this information, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

March 2, 2012

Ms. Karen Misjak  
Executive Director  
Iowa College Student Aid Commission  
603 East 12<sup>th</sup> Street, 5<sup>th</sup> Floor  
Des Moines, IA 50319

Dear Ms. Misjak:

Thank you for your letters of September 21, September 27, and November 8, 2011, and January 30, 2012 in which you provided additional information to support Iowa's (the State's) request that the U.S. Department of Education (the Department) reconsider its decision (outlined in our letter of September 8, 2011, and affirmed in our letter of September 22, 2011) not to waive the maintenance of effort (MOE) requirements of section 137 of the Higher Education Act of 1965, as amended (HEA). In this letter we are responding to the requests and concerns raised in each of your letters.

State Fiscal Stabilization Funds. In a letter dated September 21, 2011, the State indicated that it wishes to count \$35,544,094 of State Fiscal Stabilization Funds (SFSF), made available to the State under the American Recovery and Reinvestment Act of 2009 (ARRA), as State fiscal year (SFY) 2010 appropriations for the purposes of meeting the maintenance of effort requirements of section 137 of the HEA. You further indicated that these funds were not used for capital expenses or research and development costs.

The Department has reviewed your request and, under the authority in section 14012 of the ARRA, will permit the State to count these SFSF funds as SFY 2010 appropriations for purposes of determining the State's compliance with the maintenance of effort requirements in section 137 of the HEA.

Matching funds by private postsecondary institutions. Your letter of September 27, 2011, presented data on matching funds made available by private postsecondary institutions pursuant to Iowa law, section 261.9, in order to participate in the Iowa Tuition Grant Program. According to your letter, these funds are made available by private institutions of higher education and not by the State. As such, the State may not count these funds as "State support" for purposes of meeting the requirements of section 137(a) of the HEA. The Department has not considered these matching funds in its analysis of the State's waiver request.

State transfers, Medicaid expenditures, and non-General Fund appropriations. Your letter of November 8, 2011, presented additional data on State transfers into and out of the State General Fund, expenditures for Medicaid, reversions, and non-General Fund appropriations to support Iowa's waiver request. The letter requested that the Department exclude transfers into the General Fund and expenditures for Medicaid from its evaluation of the financial resources available to the State in SFY 2010 and prior years. The State's letter of January 30, 2012, also asked the Department to exclude transfers into the General Fund made from the State's Cash Reserve Fund in SFY 2010. However, transfers into the General Fund in each fiscal year represent financial resources available to the State, and, thus, the Department believes that they must be considered in determining the State's financial situation in SFY 2010 and prior years. Additionally, the State's submission of January 30 did not contain any information regarding Medicaid expenditures nor request that those funds be excluded from the evaluation of the State's General Fund. Therefore, we assume the State is not pursuing its request that we exclude those funds from our analysis.

The State further requested that the Department deduct reversions and transfers out of the General Fund from the State's appropriations in each fiscal year. If the Department were to deduct reversions from total appropriations, the Department would not be examining the amount of funds made available in each fiscal year, but rather the amounts that were actually expended. Section 137(a) of the HEA refers to the amount of financial support "provided" in each fiscal year. Therefore, the Department examines the amount of funds appropriated—or otherwise made available—for higher education and for other purposes, rather than actual expenditures in its MOE waiver determinations. Furthermore, transfers out of the General Fund represent financial commitments on the part of the State and, thus, affect the availability of funds for other purposes, namely higher education. Accordingly, the Department has not deducted these funds from its analysis.

In your letter of November 8, the State provided further data on non-General Fund appropriations in each of the years under consideration (SFY 2005 – SFY 2010). However, the State did not provide any data on revenues into these other fund sources and, given that abnormally high non-General Fund appropriations in SFY 2005 (approximately \$4 billion, or 333 percent, higher than in SFY 2006) serve to artificially inflate the five-year average, including these figures would serve only to distort the financial picture of the State over the relevant period. In a conference call with State officials on January 19, we invited Iowa to outline non-General Fund appropriations that were available for education and the associated revenues into those funds for each of SFYs 2005-2010. Additionally, we provided the State an opportunity to explain the SFY 2005 non-General Fund appropriations level. The State's January 30 data submission did not contain this information.

Iowa's Cash Reserve Fund. The State's letter of January 30, 2012, also provided additional information on the State's Cash Reserve Fund and Title I of the Iowa Code, Section 8.57, which requires that, in years when the State's Cash Reserve Fund is less than 7.5 percent of the adjusted revenue estimate, the State must appropriate a portion of State revenues to that Fund. However, the statute does not require more than 1 percent of the adjusted revenue estimate to be transferred in any given year. The Department's letters of September 8 and September 22, 2011, note that the State's revenues in SFY 2010 exceeded total State appropriations by \$330,470,541.

According to data presented by the State, Iowa was required by statute to make an appropriation to the Cash Reserve Fund from SFY 2010 funds. In that year, one percent of the adjusted revenue estimate was approximately \$58.6 million, \$271.9 million less than the realized surplus in that fiscal year—an amount well in excess of the State’s shortfall in support for financial aid for students attending private institutions of higher education. Furthermore, data from the State indicate that Iowa actually appropriated \$287.4 million to the Cash Reserve Fund, leaving approximately \$43 million in excess revenues that were not otherwise appropriated. Therefore, we have determined that no adjustment to our analysis is justified because of the Cash Reserve Fund requirements.

We have thoroughly reviewed the information provided in your letters and have determined that there is no basis to change our decision to deny Iowa’s request for a waiver of the maintenance of effort requirements in section 137(a) of the HEA. In SFY 2010, Iowa experienced a 0.69 percent increase in State revenues from the prior five year average and General Fund revenues exceeded appropriations substantially, even when accounting for the State’s Cash Reserve Fund requirements. Therefore, the Department is unable to determine that the State faced an exceptional or uncontrollable circumstance in SFY 2010 that prevented it from maintaining State financial support for private institutions of higher education and will not change its decision to deny the State’s waiver request.

Since Iowa has not demonstrated an exceptional or uncontrollable circumstance in SFY 2010 that prevented it from maintaining its required level of support under section 137(a) of the HEA and has not received a waiver of those requirements, the State will not receive its Federal fiscal year (FFY) 2011 award under the College Access Challenge Grant (CACG) Program unless, in accordance with section 137(d) of the HEA, the State makes significant efforts to correct the violation.

Because the State has included \$35,544,094 in SFSF expenditures in its calculation of State support for public institutions of higher education, Iowa must only make available an additional \$3,589,640 in support for financial aid for students attending private institutions of higher education to receive its FFY 2011 award under the CACG Program. As outlined in the Department’s September 22, 2011, letter, if the State submits an assurance, signed by the Governor, by March 30, 2012, of its intent to provide this additional financial support, the Department will continue to hold the State’s FFY 2011 funding under the CACG Program until September 30, 2012. The State will be permitted to draw down these funds when it provides evidence that additional support has been provided. If no assurance is received from the State by March 30, 2012, the Department will de-obligate FFY 2011 CACG funds, and the State may reapply for CACG funding in FFY 2012.

If you have questions regarding this information, you may contact Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or [debra.saunders-white@ed.gov](mailto:debra.saunders-white@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 8, 2011

Ms. Dana Kelly  
Idaho State Board of Education  
650 W. State Street, P.O. Box 83720  
Boise, ID 83720-0037

Dear Ms. Kelly:

This letter is in response to your letter on May 15, 2011 (supplemented by additional information provided on June 10, 2011, July 8, 2011, and August 2, 2011) in which the State of Idaho requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time taken to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide support for higher education that is equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Department is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for the nation's institutions of higher education.

Idaho has provided data indicating that the State provided \$288,304,246 for public institutions of higher education in State fiscal year (SFY) 2010, \$23,273,480 less than the average amount it provided over the preceding five State fiscal years (SFY 2005 – SFY 2009) – a decreased of 7.47 percent.<sup>1</sup> During the same year, Idaho provided \$1,467,469 in support for financial aid for students attending private institutions of higher education, \$44,319 more than the average amount it provided over the preceding five State fiscal years – an increase of 3.11 percent.

<sup>1</sup>In assessing its performance on the requirements under section 137(a)(1) of the HEA, Idaho disaggregated the State's operational support from its support for financial aid to students attending public institutions of higher education. However, in making maintenance of effort determination for the public institutions requirement, the Department considers all non-capital, non-research and development expenses and costs—including student financial aid.

Idaho's total State revenue declined by 12.14 percent in SFY 2010 from the preceding five-year average (SFY 2005 – SFY 2009). In addition, the State's total appropriations decreased by 5.92 percent from the prior five-year average.

In considering all of the information provided we have determined that it would not be equitable to grant a waiver to the State under section 137(c) of the HEA. While we recognize that the State faced a difficult financial situation in SFY 2010, in determining whether granting a waiver would be equitable we considered the fact that the reduction in support for public institutions of higher education (7.47 percent) was greater than the percentage reduction in overall State appropriations (5.92 percent) from the preceding five-year average.

When a State fails to maintain State financial support at the level required by law, section 137(d) of the HEA directs that the "Secretary shall withhold... any amount that would otherwise be available to the State... until such State has made significant efforts to correct the violation." At this time, Idaho cannot receive an award for Federal fiscal year (FFY) 2011 under the CACG program because it has not met the maintenance of effort requirement related to State support for public institutions of higher education nor received a waiver of that requirement. However, if Idaho makes significant efforts to correct the violation, the Department will allow the State to receive its full FFY 2011 award in the CACG program.

Recognizing that the State faced a reduction in State revenues that precipitated a reduction in total State appropriations, the Department will not require the State to fully restore the \$23,273,480 shortfall to receive its FFY 2011 award under the CACG program. Instead, we have determined that the State must make available to public institutions of higher education an additional \$4,837,431 (exclusive of capital expenditures and research and development costs) -- the amount needed to bring reductions in State support for public institutions of higher education (reduced 7.47 percent) in line with reductions in overall State appropriations (reduced 5.92 percent) -- to meet the standard of "significant efforts" set out in the HEA. If Idaho makes these additional funds available, these funds would be counted as SFY 2010 expenditures for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

The Department understands that the State may need additional time to make these funds available. As such, if the State submits an assurance, signed by the Governor, of its intent to provide such support within 12 months, the Department will grant the State a year to provide this additional support. If the Department receives such an assurance by September 26, 2011, the Department will obligate the State's FFY 2011 CACG award but place a hold on drawdown of the funds until the State provides the Department with evidence that the additional support has been provided. If no assurance is provided, the Department will not obligate the State's FFY 2011 CACG award and the State may reapply for CACG funding in FFY 2012, at which time the State will need to provide evidence that it has met the maintenance of effort obligations under section 137(a) of the HEA for SFY 2011.

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The Department retains the right to conduct an audit or otherwise review your records pertaining to all CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirements and the CACG awards as required by 34 C.F.R. §80.42.

If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 22, 2011

Mr. Mike Rush  
Office of the Idaho State Board of Education  
650 W. State Street  
P.O. Box 83720  
Boise, ID 83720

Dear Mr. Rush:

Thank you for your letter of September 12, 2011 in response to the U.S. Department of Education's (Department) letter of September 8, 2011, in which the Department denied Idaho's request for a waiver of the maintenance of effort requirements of section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f.

In your response, you indicated that Idaho wishes to count \$4,837,431 of State Fiscal Stabilization Funds (SFSF), made available under the American Recovery and Reinvestment Act of 2009, as State fiscal year (SFY) 2010 expenditures for the purposes of meeting the maintenance of effort requirements of section 137(a) of the HEA. You further certified that these funds were not used for capital expenses or research and development costs.

The Department has reviewed your request and will permit the State to count these SFSF funds as SFY 2010 expenditures when reviewing the State's obligations under section 137 of the HEA. However, even with the inclusion of these additional funds, the State has still not satisfied the maintenance of effort requirements of section 137(a) of the HEA. Instead, we will regard these additional funds as indicating that the State has made a "significant effort" to correct the maintenance of effort violation in SFY 2010, in accordance with the Department's letter of September 8, 2011. At this time, the Department has determined that the State has met the standard of section 137(d) of the HEA, and will allow the State to receive its full Federal fiscal year (FFY) 2011 award in the College Access Challenge Grant (CACG) program. The Department considers this issue resolved.

As outlined in the Department's September 8, 2011 letter, the State will be required to count these additional funds as SFY 2010 expenditures in future years when calculating its obligations under section 137(a) of the HEA.

The Department appreciates Idaho's efforts to resolve its maintenance of effort issues, and we look forward to working with you as you continue to increase college access and success for underprivileged students.

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 2, 2011

Ms. Teresa Lubbers  
Commissioner  
Indiana Commission for Higher Education  
101 W. Ohio Street, Suite 550  
Indianapolis, IN 46204

Dear Ms. Lubbers:

This letter is in response to your letter dated June 14, 2011 in which the State of Indiana requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time your staff took to provide the information.

Under section 137(a) of the HEA, a State must provide support for higher education that is equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) Program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Department is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for higher education.

Indiana provided data indicating that total State revenue decreased by 1.70 percent in State fiscal year (SFY) 2010 from the preceding five-year average. In that same year, State support for public institutions of higher education increased by \$80,900,000 over the preceding five-year average – an increase of 5.99 percent. As indicated in the request, the State reduced financial support for private institutions of higher education by \$12,080,000 in SFY 2010 compared to the preceding five-year average (SFY 2005-SFY 2009) – a reduction of 16.13 percent. The State also indicated that financial aid awards are made based on student eligibility with no consideration of the type of institution (public or private) that the student attends. Therefore, Indiana only controls the overall appropriation for student financial aid and has no control over whether the funds are used to attend a public versus a private institution. Data from the State indicate that the overall appropriation for student financial aid increased by \$43.3 million in SFY 2010 over the preceding five-year average – an increase of 19.7 percent.

In considering all of the information provided by the State, we believe that the State's failure to meet the maintenance of effort requirement for private institutions is due to an "uncontrollable circumstance"—namely, the State's inability to control the distribution of financial aid funds between public and private institutions. Therefore, we have determined that it would be equitable to grant a waiver of the requirements of section 137(a) of the HEA for FY 2010. Accordingly, the Department will provide Indiana with its full FFY 2011 award under the CACG program.

The Department retains the right to conduct an audit or otherwise review your records pertaining to all CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirements and the CACG awards as required by 34 C.F.R. §80.42.

We appreciate your commitment to higher education and look forward to continued collaboration on its behalf. If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 2, 2011

Ms. Diane Lindeman  
Project Director for the College Access Challenge  
Grant Program  
Kansas Board of Regents  
1000 S.W. Jackson, Suite 520  
Topeka, KS 66612

Dear Ms. Lindeman:

This letter is in response to your letter dated May 31, 2011 (supplemented by additional information on June 22, 2011) in which the State of Kansas requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time your staff took to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide support for higher education that is equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) Program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Department is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for higher education.

Kansas provided data indicating that total State revenue decreased by 5.01 percent in State fiscal year (SFY) 2010 from the preceding five-year average (SFY 2005-SFY 2009). As indicated in the request, the State reduced State financial support for public institutions of higher education by \$24,916,511 in SFY 2010 compared to the preceding five-year average – a reduction of 3.61 percent. That same year, the State increased support for financial aid for students attending private institutions of higher education by \$481,580 – an increase of 5.74 percent. The reduction in support for public institutions of higher education (3.61 percent) was smaller than the percentage reduction in overall State appropriations (4.58 percent) and the reduction in revenue (5.01 percent) from the preceding five-year average.

In considering all of the information provided by the State, we believe that the State of Kansas faced a difficult financial situation in SFY 2010. While it is regrettable that the State cut support for public institutions of higher education, we recognize that this reduction in support was relatively small compared to the cuts in State appropriations overall and the reduction in revenue. Accordingly, we have determined that it is equitable to grant a waiver under section 137(c) of the HEA due to exceptional or uncontrollable circumstances – the precipitous and unforeseen decline in the financial resources of the State.

Accordingly, the Department will award Kansas its Federal fiscal year 2011 grant under the CACG program. The Department retains the right to conduct an audit or otherwise review your records pertaining to all CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirements and the CACG awards as required by 34 C.F.R. §80.42.

We appreciate your commitment to higher education and look forward to continued collaboration on its behalf. If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 8, 2011

Ms. Heather Poole  
Louisiana Office of Student Financial Assistance  
1885 Wooddale Boulevard  
Baton Rouge, LA 70806

Dear Ms. Poole:

This letter is in response to your May 31, 2011 letter (supplemented by additional information provided on June 22, 2011) in which the State of Louisiana requests a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time your staff took to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide support for higher education in an amount equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). A State that does not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Department is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for the nation's institutions of higher education.

Louisiana has provided data indicating that the State provided \$896,822,263 for public institutions of higher education in State fiscal year (SFY) 2010, \$226,248,930 less than the average amount it provided during the preceding five State fiscal years (SFY 2005 – SFY 2009) – a reduction of 20.15 percent. During the same year, the state made \$160,800,479 in financial aid available for students attending private institutions of higher education, \$26,454,239 more than the average amount provided during the preceding five State fiscal years – and increase of 19.69 percent.

Louisiana's total State revenue decreased by 2.70 percent in SFY 2010 from the preceding five-year average. However, the State's total appropriations increased by 4.01 percent in SFY 2010 from the preceding five-year average.

In considering all of the information provided, we have determined that it would not be equitable to grant a waiver to the State under section 137(c) of the HEA. In determining whether granting a waiver would be equitable, we considered the fact that the State reduced support for public institutions of higher education by 20.15 percent while increasing total State appropriations by 4.01 percent from the preceding five-year average.

When a State fails to maintain State financial support at the level required by law, section 137(d) of the HEA directs that the “Secretary shall withhold...any amount that would otherwise be available to the State...until such State has made significant efforts to correct the violation.” At this time, Louisiana cannot receive an award for Federal fiscal year (FFY) 2011 under the CACG program because it has not met the maintenance of effort requirement related to State support for public institutions of higher education nor received a waiver of that requirement. However, if the State makes significant efforts to correct the violation, the Department will allow the state to receive its full FFY 2011 award in the CACG program.

The Department has determined that the State must make available an additional \$226,248,930 in support for public institutions of higher education (exclusive of capital expenses and research and development costs) – the amount needed to fully restore the shortfall in State support in SFY 2010 – to meet the “significant efforts” standard of the HEA. If Louisiana makes these additional funds available, these funds would be counted as SFY 2010 support for the purposes of calculating the State’s maintenance of effort Obligations in future years under the HEA.

The Department understands that the State may need additional time to make these funds available. As such, if the State submits an assurance signed by the Governor of its intent to provide such support within 12 months, the Department will grant the State a year to provide this additional support. If the Department receives such an assurance by September 26, 2011, the Department will obligate the State’s FFY 2011 CACG award but place a hold on drawdown of the funds until the State provides the Department with evidence that the additional support has been provided. If no assurance is provided, the Department will not obligate the State’s FFY 2011 CACG award and the State may reapply for CACG funding in FFY 2012, at which time the State will need to provide evidence that it has met the maintenance of effort obligations under section 137(a) of the HEA for SFY 2011.

The Department of Education retains the right to conduct an audit or otherwise review your records pertaining to prior CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirements and the CACG awards as required by 34 C.F.R. §80.42.

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If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

February 9, 2012

Ms. Heather Poole  
Louisiana Office of Student Financial Assistance  
1885 Wooddale Boulevard  
Baton Rouge, LA 70806

Dear Ms. Poole:

Thank you for your letter of November 22, 2011 (and for the additional information provided on September 28, 2011 and October 12, 2011), in response to the U.S. Department of Education's (Department's) letter of September 8, 2011, in which the Department denied the State of Louisiana's (the State's) request for a waiver of the maintenance of effort requirements of section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f.

In your response, you indicated that Louisiana wishes to count \$10,094,691 of State Fiscal Stabilization Funds, made available under the American Recovery and Reinvestment Act of 2009, and expended by the State in State fiscal year (SFY) 2011 as SFY 2010 expenditures for the purposes of satisfying section 137(d) of the HEA. You further certified that these funds were not used for capital expenses or research and development costs.

The Department has reviewed your request and will allow the State to count these additional funds as SFY 2010 expenditures under section 137 of the HEA. Even with the inclusion of these additional funds, the State has not satisfied the maintenance of effort requirements of section 137(a) of the HEA. Instead, we will regard these additional funds as a "significant effort" from the State to correct the maintenance of effort violation in SFY 2010, in accordance with the Department's letter of September 8.<sup>1</sup> At this time, the Department has determined that the State has met the standard of section 137(d) of the HEA, and will allow the State to receive its full Federal fiscal year 2011 award in the College Access Challenge Grant (CACG) program. The Department considers this issue resolved.

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<sup>1</sup> The Department adjusted the State's MOE shortfall from the amount identified in the September 8, 2011 letter (\$226,248,930) to \$10,094,691 based on new information the State provided on October 12, 2011, in which the State included SFSF funds expended in SFY 2010 in its calculation of State support for public institutions of higher education for that year.

As outlined in the Department's September 8, 2011, letter, the State will be required to count these additional funds as SFY 2010 expenditures in future years when calculating its obligations under section 137(a) of the HEA.

The Department appreciates Louisiana's efforts to resolve its maintenance of effort issues, and we look forward to working with you to increase college access and success for underprivileged students.

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 8, 2011

Ms. Mary Ann Chartrand  
Director  
Grants Coordination and School Support  
Michigan Department of Education  
608 W. Allegan  
Lansing, MI 48909

Dear Ms. Chartrand:

This letter is in response to your letter on June 21, 2011 (supplemented by additional information provided on June 24, July 14, and July 27, 2011) in which the State of Michigan requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time taken to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide support for higher education that is equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Department is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for the nation's institutions of higher education.

Michigan provided data indicating that the State provided \$1,678,442,722 for public institutions of higher education in State fiscal year (SFY) 2010, \$113,849,093 less than the average amount provided during the five preceding State fiscal years (SFY 2005 – SFY 2009) – a reduction of 6.35 percent.<sup>1</sup>

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<sup>1</sup> Calculations of the State's support for public institutions of higher education combined total operational support for public institutions with financial aid made available for students attending those institutions. In the State's July 27, 2011 communication, the State provided estimates of the share of appropriations for financial aid that are expended at private institutions of higher education. The remaining share has been counted as financial aid for students attending public institutions.

During the same year, Michigan made no funds available for students attending private institutions of higher education, \$36,423,860 less than the average amount it provided during the five preceding State fiscal years – a reduction of 100 percent.<sup>2</sup>

Michigan's total State revenues declined by 5.52 percent in SFY 2010 from the preceding five-year average and total State appropriations declined by 5.02 percent from the prior five-year average.

In considering all of the information provided, we have determined that it would not be equitable to grant a waiver to the State under section 137(c) of the HEA. While we recognize that the State faced a difficult financial situation in SFY 2010, in determining whether granting a waiver would be equitable, we considered the fact that the reduction in support for public institutions of higher education (reduced 6.35 percent) and financial aid for students attending private institutions of higher education (reduced 100 percent) was greater than the percentage reduction in total State appropriations (reduced 5.02 percent) and greater than the overall decline in State total appropriations (reduced 5.52 percent) and greater than the overall decline in State revenues (reduced 5.52 percent) from the preceding five-year averages.

When a State fails to maintain State financial support at the level required by law, section 137(d) of the HEA directs that the "Secretary shall withhold...any amount that would otherwise be available to the State...until such State has made significant efforts to correct the violation." At this time, Michigan cannot receive an award for Federal fiscal year (FFY) 2011 under the CACG program because it has not met the maintenance of effort requirements nor received a waiver of those requirements. However, if Michigan makes significant efforts to correct the violation, the Department will allow the State to receive its full FFY 2011 award in the CACG program.

Recognizing that the State faced a reduction in State revenue that precipitated a reduction in total State appropriations, the Department will not require the State to fully restore the \$150,269,967 shortfall to receive its FFY 2011 award under the CACG program. Instead, we have determined that the State must make available an additional \$23,878,363 in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and an additional \$34,595,487 in support for financial aid for students attending private institutions of higher education - the amounts needed to bring reductions in State support for higher education in line with reductions in overall appropriations – to meet the standard of "significant efforts" set out in the HEA. If Michigan makes these additional funds available, these funds would be counted as SFY 2010 support for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

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<sup>2</sup> Calculations of the State's support for financial aid for students attending private institutions of higher education were based on the availability of funds under the Tuition Grant Program – the State's only dedicated source of financial aid for students attending private institutions of higher education.

The Department understands that the State may need additional time to make these funds available. As such, if the State submits an assurance signed by the Governor of its intent to provide such support within 12 months, the Department will grant the State a year to provide this additional support. If the Department receives such an assurance by September 26, 2011, the Department will obligate the State's FFY 2011 CACG award but place a hold on drawdown of the funds until the State provides the Department with evidence that the additional support has been provided. If no assurance is provided, the Department will not obligate the State's FFY 2011 CACG award and the State may reapply for CACG funding in FFY 2012, at which time the State will need to provide evidence that it has met the maintenance of effort obligations under section 137(a) of the HEA for SFY 2011.

The Department retains the right to conduct an audit or otherwise review your records pertaining to all CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirements and the CACG awards as required by 34 C.F.R. §80.42.

If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

February 22, 2012

Mr. Michael P. Flanagan  
Superintendent of Public Instruction  
Michigan Department of Education  
808 West Allegan Street  
P.O. Box 30008  
Lansing, MI 48909

Dear Mr. Flanagan:

Thank you for your letter of September 21, 2011, and other correspondence regarding the U.S. Department of Education's (the Department's) denial of Michigan's request for a waiver of the maintenance of effort requirements under section 137 of the Higher Education Act of 1965, as amended (HEA) and requesting that the Department reconsider that decision. We appreciate the efforts of the State and its staff to work with the Department to resolve this issue. We have considered the information provided by you or members of your staff by letter on September 28 and November 23, 2011, and in conference calls on September 20 and October 27, 2011.

As discussed in our letter of September 8, 2011, in State fiscal year (SFY) 2010, Michigan's support for public institutions of higher education declined by 6.35 percent from the preceding five-year average, and its support for private institutions of higher education declined by 100 percent – since no State funds were made available for students attending private institutions of higher education. In addition, State support for “general use” financial aid declined by 99.15 percent. The Department recognizes that the State faced a difficult financial situation in SFY 2010; however, a waiver could not be granted because Michigan's own data indicate that reductions in support for public institutions of higher education (reduced 6.35 percent) and for financial aid for students attending private institutions of higher education (reduced 100 percent) were greater than the overall decline in State revenues (reduced 5.52 percent) and State appropriations (reduced 5.02 percent) from the preceding five-year averages. Your letter of November 23, 2011, and earlier communications did not provide any information to contradict the facts presented by the Department in its letter of September 8.

However, your letter did present additional information on several issues, including the State's economic crisis, the Department's application of the proportionality test (i.e., equitability), the use of State Fiscal Stabilization Funds (SFSF), and the use of Temporary Assistance to Needy Families (TANF) Block Grant funds.

While we are sensitive to the economic factors outlined in your letter, including the increase in unemployment across the State and the bankruptcies of two of the State's largest employers, the reductions in State revenues were taken into account in our initial analysis. As noted above, the Department recognizes that the State faced a difficult financial situation in SFY 2010 – with total

State revenues decreasing by 5.52 percent from the prior five-year average (and 0.30 percent from the prior year) – and stated that fact in our letter of September 8.

Your November 23 letter notes that “...Michigan was simply unable to maintain higher education spending in FY 2010 at the level that had prevailed in the state over the preceding five years.” The Department recognizes that, when State revenues decline, it may be necessary to reduce support for certain beneficiaries of State support. However, consistent with the statute, the Department’s waiver evaluation process requires that any reductions in support for higher education be equitable; that is, reductions in support for higher education must be no greater than reductions in the overall State budget. You also noted concerns that, at the time the SFY 2010 budget was adopted by the State of Michigan, “(The Department) had not developed nor articulated the...test that is currently being used to evaluate waiver requests,” and that “Michigan met its own proportionality test by maintaining total spending on education at the same 45.2 percent share of total state spending that had prevailed in the preceding five years.”

The proportionality test used by the Department is consistent with the discretion afforded to the Department by section 137 of the HEA in determining whether granting a waiver would be “equitable.” The State’s 100 percent reduction in State support for financial aid for students attending private institutions of higher education and its 99.15 percent reduction in State support for “general use” financial aid do not meet the Department’s proportionality test since overall State appropriations only decreased by 5.02 percent from the preceding five-year average.

You also note that “Michigan committed \$68,238,000 in SFSF resources to higher education spending in FY 2010.” As discussed with members of your staff on conference calls on both September 20 and October 27, these funds were included in the State’s earlier data submissions and, thus, were factored into the Department’s decision outlined in our September 8 letter. Your letter indicates that this funding made the reduction in State support to public institutions of higher education 2.54 percent, but data from the State indicate a 6.35 percent reduction. The State was given the opportunity to provide additional data on State support for institutions of higher education, but has yet to supply such data to the Department. Therefore, we have no basis to revise our initial finding that Michigan reduced its support for public institutions of higher education in Michigan by 6.35 percent.

Your letter also raises concerns about the Department’s consideration of the State’s use of Federal TANF funds made available under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended. The State has previously noted that “State funds for all [financial aid] programs...began to be replaced by federal Temporary Assistance for Needy Families (TANF) funds starting in FY08. State expenditures for all programs...therefore, are actually sharply reduced for FY08 and FY09, and zero for FY10.” But, as the State notes, TANF funds are Federal funds, and, as such, they are ineligible to be counted toward the State’s maintenance of effort requirements in the HEA. We appreciate that the State believes that it made financial aid a priority despite the State’s fiscal constraints; however, we cannot allow the State to supplant dollars previously provided by Michigan with TANF funds provided by the Federal government and count those funds as State support for higher education.

Because we cannot count Federal TANF dollars as State support for higher education, we considered only State-provided funds for financial aid. According to the information provided by Michigan, the State made \$1 million available from State sources for financial aid in SFY 2010, none of which was appropriated to the State’s Tuition Grant Program for students

attending private institutions of higher education. This is compared to \$154 million made available, on average, during the preceding five State fiscal years—\$36.4 million of which was appropriated to the State’s Tuition Grant Program. Therefore, our analysis concluded that the State reduced financial aid for students attending private institutions by 100 percent and overall student aid by 99.15 percent—reductions that do not meet the proportionality test in light of a 5.02 percent decline in overall appropriations over the same period.

In summary, the Department has thoroughly reviewed all of the information provided in your correspondence and has determined that there is no basis to change our decision to deny Michigan’s request for a waiver of the maintenance of effort requirements of section 137 of the HEA. As such, the findings in our letter of September 8, 2011, stand.

Because Michigan failed to meet the maintenance of effort requirements of section 137(a) of the HEA and has not received a waiver of those requirements, the State will not receive its Federal fiscal year (FFY) 2011 award under the College Access Challenge Grant (CACG) Program. If, in accordance with section 137(d) of the HEA, the State makes significant efforts to correct the violation, the Department will allow the State to receive its FFY 2011 award under the CACG Program. The Department has determined that Michigan must make available an additional \$23,881,200 in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and \$34,595,487 in support for financial aid for students attending private institutions of higher education to receive its FFY 2011 award under the CACG Program.

As outlined in the Department’s September 8, 2011, letter, if the State submits an assurance, signed by the Governor, of its intent to provide this additional financial support, the Department will continue to hold the State’s FFY 2011 funding under the CACG Program until September 30, 2012. The State will be permitted to draw down these funds when it provides acceptable evidence that additional support has been provided. If no assurance is received from the State by March 15, 2012, the Department will de-obligate FFY 2011 CACG funds. Regardless of whether the State submits an assurance or not, the State may reapply for CACG funding in FFY 2012.

If you have additional questions or concerns regarding the maintenance of effort waiver process, you may contact Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or [debra.saunders-white@ed.gov](mailto:debra.saunders-white@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa

cc: Ms. Mary Ann Chartrand, Michigan Department of Education, Office of Grants  
Coordination & School Support



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 2, 2011

Ms. Nancy Walters  
Project Director of College Access Challenge  
Grant Program  
Minnesota Office of Higher Education  
1450 Energy Park Drive, Suite 350  
St. Paul, MN 55108

Dear Ms. Walters:

This letter is in response to your letter dated June 14, 2011 (supplemented by additional information provided by your staff on June 24, 2011) in which the State of Minnesota requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time your staff took to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide support for higher education that is equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) Program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Department is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for higher education.

Minnesota provided data indicating that total State revenue decreased by 7.87 percent in State fiscal year (SFY) 2010 from the preceding five-year average (SFY 2005-SFY 2009). As indicated in the request, the State reduced financial support for public institutions of higher education by \$8,134,460 in SFY 2010 compared to the preceding five-year average – a reduction of 0.69 percent. In that same year, the State increased support for financial aid for students attending private institutions by \$15,647,999 over the preceding five-year average. The reduction in support for public institutions of higher education (0.69 percent) was smaller than the percentage reduction in overall State appropriations (8.45 percent) and the reduction in revenue (7.87 percent) from the preceding five-year average.

In considering all of the information provided by the State, we believe that the State of Minnesota faced a difficult financial situation in SFY 2010. While it is regrettable that Minnesota cut support for public institutions of higher education, we recognize that this reduction in support was relatively small compared to the cuts in State appropriations overall and the reduction in revenue. Accordingly, we have determined that it is equitable to grant a waiver under section 137(c) of the HEA due to exceptional or uncontrollable circumstances – the precipitous and unforeseen decline in the financial resources of the State.

Accordingly, the Department will award Minnesota its Federal fiscal year 2011 CACG Program grant. The Department retains the right to conduct an audit or otherwise review your records pertaining to all CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirements and the CACG awards as required by 34 C.F.R. §80.42.

We appreciate your commitment to higher education and look forward to continued collaboration on its behalf. If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 22, 2011

Ms. Lorraine T. Cabrera  
Interim President  
Northern Marianas College  
P.O. Box 501 250  
Saipan, MP 96950

Dear Ms. Cabrera:

This letter is in response to your letter dated May 31, 2011 (supplemented by additional information provided on June 13, July 18, August 18, August 18, August 19, and September 1, 2011) in which the Commonwealth of the Northern Marianas Islands (CNMI) requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time taken to provide the initial and supplemental information.

Under section 137(a) of the HEA, the CNMI must provide support for higher education that is equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) Program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Department is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for the nation's institutions of higher education.

The CNMI submitted data indicating that the CNMI provided \$8,418,090 in support for its sole public institution of higher education – Northern Marianas College – in State fiscal year (SFY) 2010, \$981,028 less than the average amount it provided during the preceding five State fiscal years (SFY 205 – SFY 2009) – a reduction of 1.44 percent. There are no accredited private institution of higher education in the CNMI.

Data from the CNMI indicate that total State revenue decreased by 21.37 percent in SFY 2010 from the preceding five-year average and total State appropriations decreased by 25.00 percent from the prior five year average.

In considering all of the information provided by the State, we believe that the State faced a difficult financial situation in FY 2010. While it is regrettable that the State cut support for public institutions of higher education, we recognize that this reduction in support was relatively small compared to the cuts in appropriations overall and the reduction in revenue. Accordingly, we have determined that it is equitable to grant a waiver under section 137© of the HEA due to exceptional or uncontrollable circumstances – the precipitous and unforeseen decline in the financial resources of the CNMI.

Accordingly, the Department will provide CNMI with its Federal fiscal year 2011 award under the CACG program. The Department retains the right to conduct an audit or otherwise review CNMI's records pertaining to all CACG awards. Therefore, the CNMI must retain all records relating to the maintenance of effort requirements and the CACG awards as required by 34 C.F.R. §80.42.

We appreciate your commitment to higher education and look forward to continued collaboration on its behalf. If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 22, 2011

Ms. Marsha Watson  
Mississippi Institutions of Higher Learning  
3825 Ridgewood Road  
Jackson, MS 39211

Dear Ms. Watson:

This letter is in response to your letter on May 31, 2011 (supplemented by additional information provided on July 14, 2011) in which the State of Mississippi requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time your staff took to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide support for higher education that is equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) program authorized by section 781 of the HEA, 20 U.S.C. §1141. The U.S. Department of Education (Department) is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for higher education.

Mississippi has provided data indicating that the State provided \$900,998,402 in support for public institutions of higher education in State fiscal year (SFY) 2010, which was \$18,636,273 more than the average amount it provided over the preceding five State fiscal years (SFY 2005 – SFY 2009) – an increase of 2.11 percent.<sup>1</sup> That same year, the State provided \$4,371,587 in support for financial aid for students attending private institutions of higher education, which was \$707,674 less than the average amount provided over the preceding five State fiscal years –

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<sup>1</sup> The SFY 2010 appropriations level for public institutions of higher education includes both operational support and student financial aid available to students attending public institutions of higher education. Data from the State indicate that operational support increased \$19,150,458 from the prior five-year average – an increase of 2.23 percent.

a reduction of 13.93 percent. Recognizing that Mississippi does not directly appropriate student aid funds for private institutions of higher education, the Department also notes that the State's support for total student financial aid declined \$1,221,859 from the preceding five State fiscal years – a reduction of 4.28 percent.

Mississippi's total State revenues declined by 0.58 percent in SFY 2010 from the preceding five-year period and 4.93 percent from the prior year. In addition, the State's total appropriations decreased by 2.31 percent in SFY 2010 from the prior five-year period.

In considering all of the information provided, we have determined that it would not be equitable to grant a waiver to the State under section 137(c) of the HEA. While we recognize that the State faced a difficult financial situation in SFY 2010, in determining whether granting a waiver would be equitable, we considered the fact that the reductions in support for financial aid for students attending private institutions of higher education (13.93 percent), and in support for student financial aid overall (4.28 percent) were greater than the percentage declines in total State appropriations (2.31 percent) and total State revenues (0.58 percent) from the preceding five-year averages.

When a State fails to maintain State financial support at the level required by law, section 137(d) the HEA directs that the "Secretary shall withhold...any amount that would otherwise be available to the State...until such State has made significant efforts to correct the violation." At this time, Mississippi cannot receive an award for Federal fiscal year (FFY) 2011 under the CACG Program because it has not met the maintenance of effort requirement nor received a waiver of that requirement. However, should the State make significant efforts to correct the violation, the Department will allow the State to receive its full FFY 2011 award in the CACG Program.

Recognizing that the State faced a reduction in State revenues that precipitated a reduction in appropriations, and further, that the State's reduction in overall student aid was smaller than the decline in student aid funds expended at private institutions of higher education, the Department will not require the State to fully restore the \$707,574 shortfall in order to be eligible for its 2011 award under the CACG program. Instead, we have determined that the State must make available an additional \$100,206 in financial aid available to students attending private institutions of higher education in order to meet the standard of "significant efforts" set out in the HEA.<sup>1</sup> – If Mississippi makes the additional \$100,206 available, these funds would be counted as SFY 2010 expenditures for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

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<sup>2</sup> The Department determined this restoration amount for financial aid for students attending private institutions by adjusting the total shortfall amount (\$707,674) in order to account for the State's inability to control the types of institutions at which students use the financial aid, thus removing the portion of the shortfall beyond the 4.28 percent reduction in total student aid. The Department further adjusted the shortfall in order to account for the reductions in overall appropriations, thus determining a restoration amount (\$100,206) that would bring cuts to financial aid for students attending private institutions in line with reductions in overall aid and total appropriations.

The Department understands that the State may need additional time to make these funds available. As such, if the State submits an assurance, signed by the Governor, of its intent to provide such support within 12 months, the Department will grant the State a year to provide this additional support. If the Department receives such an assurance by September 26, 2011, the Department will obligate the State's FFY 2011 CACG award but place a hold on drawdowns of the funds until the State provides the Department with evidence that the additional support has been provided. If no assurance is provided, the Department will not obligate the State's FFY 2011 CACG award, and the State may reapply for CACG funding in FFY 2012, at which time the State will need to provide evidence that it has met the maintenance of effort obligations under section 137(a) of the HEA for SFY 2011.

The Department retains the right to conduct an audit or otherwise review the State's records pertaining to all CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirements and the CACG awards as required by 34 C.F.R. §80.42.

If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



**UNITED STATES DEPARTMENT OF EDUCATION**  
**OFFICE OF POSTSECONDARY EDUCATION**

**THE ASSISTANT SECRETARY**

December 16, 2011

Ms. Marsha Watson  
Mississippi Institutions of Higher Learning  
3825 Ridgewood Road  
Jackson, MS 39211

Dear Ms. Watson:

Thank you for your letter of October 12, 2011, in which the State of Mississippi (the State) provided additional information in support of its request that the U.S. Department of Education (the Department) reconsider its September 22, 2011 decision to deny the State's request for a waiver of the maintenance of effort requirements in section 137 of the Higher Education Act of 1965, as amended (HEA). We appreciate the time staff took to compile this information and the State's responsiveness to the Department's concerns.

In the State's original waiver request of May 31, 2011, and in supplemental information provided to support that request, the State provided data indicating that, in State fiscal year (SFY) 2010, the State provided more financial support for public institutions of higher education (excluding capital expenditures and research and development costs) than it did, on average, during the preceding five State fiscal years (SFY 2005 – SFY 2009). However, the State also indicated that it only made available \$4,371,587 in financial aid for students attending private institutions of higher education, \$707,674 less than it did, on average, during the preceding five-year period – a reduction of 13.93 percent. The State further indicated that it did not have control over the types of institutions (public or private) at which students used the financial aid made available by the State. Based on the initial data provided by the State, the Department determined that the State decreased support for total financial aid by 4.28 percent in SFY 2010 from the prior five-year period, while total State appropriations decreased by only 2.31 percent. Based on this analysis, the Department denied the State's request for a waiver under section 137(c) of the HEA.

In a conference call on October 6, 2011 and in the State's letter of October 12, 2011, the State indicated that its initial data submission did not include all sources of aid made available for students attending institutions of higher education. The State indicated that, in addition to appropriations from its General Fund, the State also appropriates financial aid from carryover funds (i.e. unexpended funds) each year. The State provided data on the amount of carryover funds made available for student financial aid for each year (SFY 2005 – SFY 2010). With this additional information, the State appears to have made a total of \$29,009,439 available for financial aid in SFY 2010, \$627,724 less than the average amount provided during the prior five-year period – a reduction of 2.12 percent. This reduction in support is less than the reduction in overall State appropriations in that year (2.31 percent). Accordingly, the Department has

determined that it would be equitable to grant the State of Mississippi a waiver of the requirements in section 137(a) of the HEA for SFY 2011. As such, the Department will allow the State to draw down the funds made available to it under the College Access Challenge Grant (CACG) Program for Federal fiscal year 2011.

Should the State reapply for funds under the CACG Program in future years, the State will be required to demonstrate that it met the maintenance of effort requirements under section 137 of the HEA, or receive a waiver of those requirements, in order to receive funds. In those calculations, the State should include carryover funds in its calculation of total student aid made available in each year.

The Department appreciates Mississippi's efforts to resolve its maintenance of effort issues. We look forward to continuing to work with you to increase college access and success for underprivileged students.

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 2, 2011

Ms. Karen Kennedy  
Financial Aid Director  
New Mexico Higher Education Department  
2048 Galisteo Street  
Santa Fe, NM 87505-2100

Dear Ms. Kennedy:

This letter is in response to your letter dated July 27, 2011 (supplemented by additional information on August 1 and August 15, 2011) in which the State of New Mexico requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time your staff took to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide support for higher education that is equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) Program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Department is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for higher education.

New Mexico has provided data indicating that it provided \$74,317,239 in State support for public institutions of higher education in State fiscal year (SFY) 2010, \$10,402,079 more than the average amount provided over the preceding five State fiscal years – an increase of 16.27 percent. During the same year, New Mexico made \$243,291 in financial aid available to students attending private institutions of higher education, \$609,127 less than the average amount provided in the preceding five State fiscal years – a reduction of 71.46 percent.

In addition, New Mexico supports a “Student Choice” scholarship program, which is an appropriation dedicated for student financial aid at three private institutions in New Mexico— College of Santa Fe, St. John’s College, and College of the South West. In each year from SFY 2005 through 2008, the State appropriated \$1,004,700 to these three institutions, allocating the

funds based on the fall enrollment in the preceding academic years (e.g., the SFY 2006 distribution of funds was based on the enrollment distribution in the fall of 2004). Based on the enrollment distribution in the fall of 2007, St. John's College and College of the South West were appropriated a combined \$243,291 in SFY 2009. In that year, the College of Santa Fe became a for-profit institution and was, therefore, no longer eligible for Student Choice Scholarship funds. Consequently, the total Student Choice appropriation was reduced to \$243,291. The State also indicates that the reduction in funds appropriated for Student Choice Scholarship was more than offset by the increase in student aid available at public institutions. In fact, support for public institutions increased significantly in the year in which the College of Santa Fe became a for-profit institution.

In considering all of the information provided by the State, we believe that the State's failure to meet the maintenance of effort requirement for private institutions is due to an "uncontrollable circumstance"—namely, the fact that the College of Santa Fe became a for-profit institution and was, therefore, no longer eligible for Student Choice Scholarship funds. Therefore, we have determined that it would be equitable to grant a waiver of the maintenance of effort requirements of section 137(a) of the HEA for FY 2010.

The Department will award New Mexico its Federal fiscal year 2011 CACG Program grant based on the data and certification that the State has submitted. The Department retains the right to conduct an audit or otherwise review your records pertaining to all CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirements and the CACG awards as required by 34 C.F.R. §80.42.

We appreciate your commitment to higher education and look forward to continued collaboration on its behalf. If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 22, 2011

Dr. Magdalena Martinez  
Assistant Vice Chancellor for Academic  
And Student Affairs  
Nevada System of Higher Education  
5550 W. Flamingo Ste. A-2  
Las Vegas, NV 89103

Dear Dr. Martinez:

This letter is in response to your September 6, 2011 letter (supplemented by additional information provided on July 28, August 26, and September 12, 2011) in which the State of Nevada requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time taken to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide support for higher education in an amount equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). A State that does not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) Program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Department is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for higher education.

Nevada has provided data indicating that the State provided \$577,557,993 in State support for public institutions of higher education in State fiscal year (SFY) 2010<sup>1</sup>, which was \$1,832,812 less than the average amount it provided over the preceding five State fiscal years (SFY 2005 – SFY 2009) – a reduction of 0.32 percent. The State indicated that it does not make financial aid available to students attending private institutions of higher education in the State. Nevada's total State revenues increased by 2.00 percent and total State appropriations decreased by 4.53 percent in SFY 2010 from the prior five-year average.

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<sup>1</sup> The total support for public institutions of higher education in SFY 2010 includes \$392,779,372 in State funds and \$184,778,621 in State Fiscal Stabilization Funds that the State requested to count as State funds for the purposes of meeting the requirements of section 137 of the HEA. The Department granted that request and those funds are counted as State funds herein.

In considering all of the information provided by the State, we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2010 that prevented it from meeting its obligations under section 137(a) of the HEA. Accordingly, we have determined that it would not be equitable to grant a waiver under section 137(c) of the HEA.

When a State fails to maintain State financial support at the level required by law, section 137(d) of the HEA directs that the “Secretary shall withhold...any amount that would otherwise be available to the State...until such State has made significant efforts to correct the violation.” At this time, Delaware cannot receive an award for Federal fiscal year (FFY) 2011 under the CACG program because it has not met the maintenance of effort requirements nor received a waiver of those requirements. However, should the State make significant efforts to correct the violation, the Department will allow the State to receive its full FFY 2011 award in the CACG Program.

Because we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2010 that prevented it from maintaining its required level of support under section 137(a) of the HEA, the Department had determined that the State must make an additional \$1,832,812 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) – the amount need to fully restore State reductions in support for higher education in SFY 2010 – to meet the standard of “significant efforts” set out in the HEA. If Nevada makes these additional funds available, these funds would be counted as SFY 2010 for purposes of calculating the State’s future maintenance of effort obligations in future years under the HEA.

The Department understands that the State may need additional time to make these funds available. As such, if the State submits an assurance, signed by the Governor, of its intent to provide such support within 12 months, the Department will grant the State a year to provide this additional support. If the Department receives such an assurance by September 26, 2011, the Department will obligate the State’s FFY 2011 CACG award but place a hold on drawdown of the funds until the State provides the Department with evidence that the additional support has been provided. If no assurance is provided, the Department will not obligate the State’s FFY 2011 CACG award and the State may reapply for CACG funding in FFY 2012, at which time the State will need to provide evidence that it has met the maintenance of effort obligations under section 137(a) of the HEA for SFY 2011.

The Department retains the right to conduct an audit or otherwise review the State’s records pertaining to prior CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirement and the CACG awards as required by 34 C.F.R. §80.42.

If you have questions regarding this information, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

December 16, 2011

Dr. Magdalena Martinez  
Assistant Vice Chancellor for Academic  
And Student Affairs  
Nevada System of Higher Education  
5550 W. Flamingo, Ste. A-2  
Las Vegas, NV 89103

Dear Dr. Martinez:

Thank you for the letters of October 11 and October 21, 2011, in which the State of Nevada (the State) provided additional information in support of its' request that the U.S. Department of Education (the Department) reconsider its September 22, 2011 decision to deny the State's request for a waiver of the maintenance of effort requirements in section 137 of the Higher Education Act of 1965, as amended (HEA). We appreciate the time staff took to compile this information and its responsiveness to the Department's concerns.

In the State's original waiver request of September 6, 2011, and in supplemental information to support that request, the State provided data indicating that, in State fiscal year (SFY) 2010, the State provided \$577,557,993 in financial support for public institutions of higher education in the State, \$1,832,812 less than the amount it provided, on average, during the preceding five year period (SFY 2005 – SFY 2009) – a reduction of 0.32 percent. Additionally, data from the State indicated that, in that same year, the State had a 2.0 percent increase in revenues over the preceding five year average. As such, the Department determined that it would not be equitable to grant a waiver of the maintenance of effort requirements because the State did not experience an exceptional or uncontrollable circumstance, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State, in SFY 2010, that prevented it from maintaining State financial support for higher education.

In its letter of October 11, 2011, the State indicated that its initial data submission did not include all sources of revenue available for appropriation in the General Fund and submitted revised revenue data to “reflect all sources of revenue, including fees and taxes, transfer from the State's rainy day fund, as well as fund sweeps and temporary tax increases authorized by the State Legislature during the 26<sup>th</sup> Special Session.” These revised revenue data indicate that the State experienced a 3.1 percent decrease in financial resources in SFY 2010 compared to the prior five-year average. However, the data submitted by the State also indicated that the financial resources available to the State for appropriation in SFY 2010 exceeded total appropriations by \$96,786,757, a substantial “surplus” relative to the size of Nevada's overall budget.

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<sup>1</sup> This total includes \$184,778,621 in State Fiscal Stabilization Funds that the State requested to count as State Funds for the purposes of meeting the requirements of section 137 of the HEA.

In a conference call on October 20, 2011 and in a letter dated October 21, 2011, the State indicated that Nevada budgets on a biennial basis and that, as of the end of SFY 2010, the State projected a net deficit in SFY 2011 of \$99,794,465. Therefore, the State carried the \$96,787,757 “surplus” from SFY 2010 into SFY 2011 to offset deficits in that year. As such, the Department has not considered this “surplus” in its waiver determination.

Given that the State experienced a reduction in total financial resources of 3.1 percent in SFY 2010 and reduced total appropriations by 5.1 percent while only reducing support for public institutions of higher education by 0.3 percent, the Department has determined that it would be equitable to grant a waiver of the maintenance of effort requirements in section 137 of the HEA for SFY 2010. Therefore, the Department will allow the State of Nevada to draw down its Federal fiscal year 2011 award under the College Access Challenge Grant Program.

The Department appreciates Nevada’s efforts to resolve its maintenance of effort. We look forward to working with you to increase college access and success for underprivileged students.

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 22, 2011

Ms. Christine Konsistorum  
Senior Vice President  
Corporate Operations  
NYS Higher Education Services Corporation  
99 Washington Avenue  
Albany, NY 12255

Dear Ms. Konsistorum:

This letter is in response to your July 14, 2011 letter (supplemented by additional information on July 26, August 15, August 23, September 8, and September 19, 2011) in which the State of New York requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time taken to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide support for higher education that is equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) Program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Department is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for higher education.

New York has provided data indicating that it provided \$3,992,240,280 in support for public institutions of higher education in State fiscal year (SFY) 2010, \$488,531,296 more than the average amount provided during the preceding five-year period (SFY 2005 – SFY 2009) – an increase of 13.94 percent. During that same year, the State provided \$339,157,399 in support for financial aid for students attending private institutions of higher education, \$49,675,459 less than the average amount provided during the preceding five-year period – a decrease of 12.78 percent.

Recognizing that New York does not directly appropriate student aid funds for private institutions of higher education, the Department also notes that the State's support for total student financial aid increased by \$18,608,800 in SFY 2010 from the prior five-year average – an increase of 2.09 percent.

New York also provided data indicating that total State revenue increased by 5.43 percent and total State appropriations increased by 14.49 percent in SFY 2010 from the prior five-year average.

In considering all of the information provided by the State, we believe that the State's failure to meet the maintenance of effort requirement for private institutions in SFY 2010 is due to an "uncontrollable circumstance" – namely, the State's inability to control the distribution of financial aid funds between public and private institutions. Therefore, we have determined that it would be equitable to grant a waiver of the requirements of section 137(a) of the HEA for SFY 2010. Accordingly, the Department will provide New York its full Federal fiscal year 2011 grant under the CACG Program.

The Department retains the right to conduct an audit or otherwise review the State's records pertaining to all CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirements and the CACG awards as required by 34 C.F.R. §80.42.

We appreciate your commitment to higher education and look forward to continued collaboration on its behalf. If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 22, 2011

Mr. Charles Shahid  
Director  
College Access Challenge Grant Program  
Ohio Board of Regents  
30 E. Broad Street, 36<sup>th</sup> Floor  
Columbus, OH 43215

Dear Mr. Shahid:

This letter is in response to your June 21, 2011 letter (supplemented by additional information provided on June 28, July 14, August 23, August 30, and September 12, 2011) in which the State of Idaho requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time taken to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide support for higher education in an amount equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) Program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Department is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support higher education.

Ohio provided data indicating that the State provided \$1,792,989,312 in support for public institutions of higher education in State fiscal year (SFY) 2010, which was \$77,971,917 less than the average amount it provided over the preceding five State fiscal years (FY 2005-FY 2009) – a reduction of 4.17 percent<sup>1</sup>. That same year, the State provided \$42,612,117 in support for financial aid for students attending private institutions of higher education, which was

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<sup>1</sup>The SFY 2010 appropriations level for public institutions of higher education includes both operational support and student financial aid available to students attending public institutions of higher education. Data from the State indicate that operational support declined by \$60,163,673 in SFY 2010 from the preceding 5-year average – a decline of 3.37 percent.

\$45,595,894 less than the average amount it provided over the preceding five State fiscal years – a reduction of 51.69 percent<sup>2</sup>.

Ohio's total State revenues decreased by 11.01 percent SFY 2010 from the preceding five-year average and total State appropriations decreased by 12.26 percent in SFY 2010 from the prior five-year average. However, data submitted by the State also indicate that total State revenue exceeded total State appropriations by \$808,898,667 in SFY 2010, an amount well beyond the amount necessary to maintain the State's required level of financial support for higher education in SFY 2010. While we recognize that State appropriations decreased, Ohio's data establish that the State had the financial resources available to meet the requirements of section 137 of the HEA and did not do so.

In considering all of the information provided, we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2010 that prevented it from meeting its obligations under section 137(a) of the HEA. Accordingly, we have determined that it would not be equitable to grant a waiver under section 1379c) of the HEA.

When a state fails to maintain State financial support at the level required by law, section 137(d) of the HEA directs that the "Secretary shall withhold...any amount that would otherwise be available to the State...until such State has made significant efforts to correct the violation." At this time, Ohio cannot receive an award for Federal fiscal year (FFY) 2011 under the CACG Program because it has not met the maintenance of effort requirements nor received a waiver of those requirements. However, should the State make significant efforts to correct the violation, the Department will allow the State to receive its full FFY 2011 award in the CACG Program.

Because we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2010 that prevented it from maintaining its required level of support under section 137(a) of the HEA, the Department has determined that the State must make an additional \$77,971,917 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and \$45,595,894 available in support for financial aid for students attending private institutions of higher education – the amounts needed to fully restore State reductions in support for higher education – the amounts needed to fully restore State reductions in support for higher education in SFY 2010 – to meet the standard of "significant efforts" set out in the HEA. If Ohio makes these additional funds available, these funds would be counted as SFY 2010 funds for purposes of calculating the State's maintenance of effort obligations in future years under HEA.

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<sup>2</sup>In its initial submission, the State included support for financial aid for students attending proprietary institutions of higher education in its calculation of State support under section 137(a)(2) of HEA. However, section 101(a) of the HEA defines an institution of higher education as a "public or non-profit institution." Therefore, the Department has recalculated the State's level of support in each year to reflect only funds made available to students attending private non-profit institutions.

The Department understands that the State may need additional time to make these funds available. As such, if the State submits an assurance, signed by the Governor, of its intent to provide such support within 12 months, the Department will grant the State a year to provide this additional support. If the Department receives such an assurance by September 26, 2011, the Department will obligate the State's FFY 2011 CACG award but place a hold on drawdown of the funds until the State provides the Department with evidence that the additional support has been provided. If no assurance is provided, the Department will not obligate the State's FFY 2011 CACG award and the State may reapply for CACG funding to FFY 2012, at which time the state will need to provide evidence that it has met the maintenance of effort obligations under section 137(a) of the HEA for SFY 2011.

The Department retains the right to conduct an audit or otherwise review the State's records pertaining to all CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirements and the CACG grants as required by 34 C.F.R. §80.42.

If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

March 15, 2012

Honorable John R. Kasich  
Governor  
State of Ohio  
77 South High Street, 30<sup>th</sup> Floor  
Columbus, OH 43215-6117

Dear Governor Kasich:

Thank you for your letter of November 22, 2011, in which you requested that the U.S. Department of Education (the Department) reconsider its September 22, 2011, decision to deny the State of Ohio's request for a waiver of the maintenance of effort requirements of section 137 of the Higher Education Act of 1965, as amended (HEA). We appreciate the time that State staff took to compile the information provided in support of Ohio's request (provided in letters of September 28, October 21, and November 1, 2011, and in conference calls on September 27, October 20, and December 19, 2011).

In the State's original waiver request of June 21, 2011, and in supplemental information provided to support that request, the State provided data indicating that, in State fiscal year (SFY) 2010, the State made available \$1,792,989,312 in support of public institutions of higher education, \$77,971,917 less than it did, on average, during the preceding five year period (SFY 2005 – SFY 2009) – a reduction of 4.17 percent. In that same year, the State made available \$42,612,117 in support for financial aid for students attending private institutions of higher education, \$45,595,894 less than it did, on average, during the preceding five year period – a reduction of 51.69 percent. In SFY 2010, Ohio's total State revenues declined by 11.01 percent, and appropriations decreased by 12.26 percent from the preceding five year period. Additionally, initial data from the State indicated that total State revenues exceeded total State appropriations by \$808,898,667 in that year, a substantial amount relative to the size of the State's overall budget. Based on this analysis, the Department denied the State's request for a waiver under section 137(c) of the HEA.

In a letter dated September 28, 2011, Jim Petro, Chancellor of the Ohio Board of Regents, indicated that the State's initial data submission did not take into account encumbrances on State appropriations, transfers out of the General Revenue Fund (GRF), and Ohio Revised Code (ORC) Section 131.44, which requires an ending GRF balance equal to one half of one percent of the current fiscal year's revenue. In a letter on October 21, 2011, the State submitted data to support these claims. This supplemental information indicated that the GRF had revenues in

SFY 2010 totaling \$18,785,994,488.55, which included beginning cash balances, tax and non-tax receipts, and transfers into the GRF. The State also provided data indicating that the State had SFY 2010 expenditures totaling \$17,242,601,332.79, further encumbrances of \$371,280,139, and transfers out of the GRF totaling \$1,032,991,888.45.

In follow-up conference calls with the Department, Ohio indicated that the \$371.3 million in encumbrances resulted from contractual and other obligations undertaken in SFY 2010 with spending authority provided in SFY 2010 appropriations, but which were not actually expended in that year. Consistent with the statute's language concerning funds "provided" in a particular year, the Department analyzes total State appropriations, not expenditures. These encumbrances were SFY 2010 appropriations and, as such, should have been initially included in the State's data submissions. The Department now will include these funds in its analysis to provide a more accurate picture of the State's financial situation in SFY 2010.

The State also provided data indicating that the transfers out of the General Revenue Fund fell into two distinct categories: \$971.3 million in transfers for tangible personal property tax replacement transfers to the State's local governments and school districts, and \$61.6 million in transfers to non-GRF funds. The Department recognizes that these transfers both represent constraints that existed prior to the start of the fiscal year and decisions that were made in the appropriations process regarding State priorities. They apparently did not represent end-of-year decisions regarding dispensation of surplus funds, nor is the State requesting that the Department not consider these funds in its analysis. Rather, the State is requesting that the Department take into consideration that the State made decisions regarding the appropriation of its funds and has provided these data to provide a more complete picture of the State finances. As such, the Department is including these funds in its analysis.

Data from the State indicate an ending GRF cash balance of \$139,121,128.31 in SFY 2010. However, ORC 131.44 required an ending GRF cash balance of \$124,751,462.44 in that year, resulting in only \$14,369,665.87 in "surplus" funds available for appropriation. We have thoroughly reviewed all of the information provided in the State's submissions and have determined that the State did not realize a surplus of \$808 million in SFY 2010. Accordingly, we have excluded this initial finding from our evaluation of the State's waiver request.

As noted above, the State's initial waiver request indicated that total State revenues in SFY 2010 were 11.0 percent less than the prior five-year average and total State appropriations were 12.3 percent less than the prior five-year average. That same year, State support for public institutions of higher education decreased by 4.2 percent and support for financial aid for students attending private institutions of higher education decreased by 51.7 percent. In considering all of this information, the Department recognizes that the State of Ohio faced a difficult financial situation in SFY 2010 that necessitated reductions in appropriations. However, we also note that reductions in support for financial aid for students attending private institutions, and reductions in support for overall financial aid, decreased approximately four times as much as other appropriations State-wide. As such, we have determined that it would not be equitable to grant the State a waiver of the maintenance of effort requirements in section 137 of the HEA.

Since Ohio has not met the requirements of section 137(a) of the HEA nor received a waiver of those requirements, the State will not receive its Federal fiscal year (FFY) 2011 award under the College Access Challenge Grants (CACG) Program. If, in accordance with section 137(d) of the HEA, the State makes significant efforts to correct the violation, the Department will allow the State to receive its FFY 2011 award under the CACG Program.

The Department has determined that, in order to make significant efforts to correct the violation, the State must make available an additional \$34,780,403 in financial aid for students attending private institutions of higher education. This is the amount of funds that would bring the State's reductions to aid for students attending private institutions of higher education in line with reductions to overall appropriations. As outlined in the Department's September 22, 2011, letter, if the State submits an assurance, signed by you, of its intent to provide additional financial support by April 13, 2012, the Department will continue to hold the State's FFY 2011 funding under the CACG Program until September 30, 2012. The State will be permitted to draw down these funds when it provides evidence that additional support has been provided. If no assurance is received from the State by April 13, 2012, the Department will de-obligate FFY 2011 CACG funds. However, the State may reapply for CACG funding in FFY 2012.

If you have additional questions or concerns regarding the maintenance of effort waiver process, you may contact Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or [debra.saunders-white@ed.gov](mailto:debra.saunders-white@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa

cc: Mr. Charles Shahid, Director, College Access Programs, Ohio Board of Regents  
Mr. Carlos Bing, Assistant Director, College Access Programs, Ohio Board of Regents  
Mr. Jim Petro, Chancellor, Ohio Board of Regents



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 2, 2011

Ms. Stephanie Carnahan  
Director of College Access Challenge Grant Program  
Oregon University System  
P.O. Box 3175  
Eugene, OR 97403

Dear Ms. Carnahan:

This letter is in response to your May 25, 2011 letter (supplemented by additional information provided by your staff on June 21 and July 7, 2011), in which the State of Oregon requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time staff took to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide support for higher education that is equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) Program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Department is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for higher education.

In considering all of the information provided by the State, we have determined that the State of Oregon met the maintenance of effort requirements under section 137(a) of the HEA in State fiscal year 2010 and, therefore, does not require a waiver of those requirements.<sup>1</sup>

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<sup>1</sup> In assessing its performance on the requirements under section 137(a)(1) of the HEA, Oregon disaggregated the State's operational support from its support for financial aid to students attending public institutions of higher education. However, in making maintenance of effort determinations for the public institutions requirement, the Department considers all non-capital, non-research and development expenses and costs—including student financial aid. When such funds are included in the calculation, Oregon meets the requirement.

The Department will award Oregon its Federal fiscal year 2011 CACG Program grant based on the data and certifications the State has submitted. The Department retains the right to conduct an audit or otherwise review your records pertaining to all CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirements and the CACG awards as required by 34 C.F.R. §80.42.

We appreciate your commitment to higher education and look forward to our continued collaboration on its behalf. If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 22, 2011

Ms. Janet Durfee-Hidalgo  
Rhode Island Office of Higher Education  
80 Washington Street, Suite 524  
Providence, RI 02903

Dear Ms. Durfee-Hidalgo:

This letter is in response to your letter on June 24, 2011 (supplemented by additional information provided on June 29, July 6, July 8, and July 11, 2011) in which the State of Rhode Island requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time taken to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide support for higher education that is equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) program authorized by section 781 of the HEA, 20 U.S.C. §1141. The U.S. Department of Education (Department) is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for higher education.

Rhode Island provided data indicating that the State provided \$162,104,264 in support for public institutions of higher education in State fiscal year (SFY) 2010, which was \$19,335,475 less than the average amount it provided over the preceding five State fiscal years (SFY 2005 – SFY 2009) – a reduction of 10.66 percent. Data from Rhode Island also indicate that the State provided \$2,817,156 in support for financial aid for students attending private institutions of higher education in the State in SFY 2010, which was \$1,259,016 less than the average amount it provided over the preceding five State fiscal years – a reduction of 30.89 percent. Recognizing that Rhode Island does not directly appropriate student aid funds for private institutions of higher

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<sup>1</sup>The amount of financial aid the State made available to students attending private institutions of higher education SFY 2009 has been adjusted to reflect a supplemental appropriation from the State to meet the requirements of receiving its Federal fiscal year 2010 award under the CACG program. Per the Department's communication with the State on December 3, 2010, those funds were counted as SFY 2009 expenditures.

education, the Department also notes that the State's support for total student financial aid declined \$1,876,542 from the preceding five State fiscal years – a reduction of 16.84 percent.

Rhode Island's total State revenue decreased by 4.59 percent in SFY 2010 from the preceding five-year average and total State appropriations decreased by 8.36 percent in SFY 2010 from the prior five-year average. Additionally, data from the State indicate that, in SFY 2010, total State revenue exceeded total State appropriations by \$153,456,211. However, officials from the Rhode Island Department of Administration indicate that, of this total, only \$21.2 million was actually available for appropriation to support higher education.

In considering all of the information provided, we have determined that it would not be equitable to grant a waiver to the State under section 137(c) of the HEA. While we recognize the State faced a difficult financial situation in SFY 2010, in determining whether granting a waiver would be equitable, we considered the fact that the reductions in support for public institutions of higher education (10.66 percent), financial aid for students attending private institutions of higher education (30.89 percent), and total State financial aid (16.84 percent) were greater than the percentage declines in overall State appropriations (8.36 percent) and overall State revenue (4.59 percent) from the preceding five-year average.

When a State fails to maintain State financial support at the level required by law, section 137(d) of the HEA directs that the "Secretary shall withhold...any amount that would otherwise be available to the State...until such State has made significant efforts to correct the violation." At this time, Rhode Island cannot receive an award for Federal fiscal year (FFY) 2011 under the CACG Program because it has not met the maintenance of effort requirement nor received a waiver of that requirement. However, should the State make significant efforts to correct the violation, the Department will allow the State to receive its full FFY 2011 award in the CACG program.

Recognizing that the State faced a reduction in State revenues that precipitated a reduction in appropriations, the Department will not require the State to fully restore the \$20,594,491 shortfall to receive its FFY 2011 award under the CACG Program. Instead, we have determined that the State must make available an additional \$4,162,132 to public institutions of higher education (exclusive of capital expenditures and research and development costs) and an additional \$345,422 in financial aid available to students attending private institutions of higher education.<sup>2</sup> If Rhode Island makes these additional funds available, these funds would be counted as SFY 2010 support for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

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<sup>2</sup>The Department determined this restoration amount for financial aid for students attending private institutions by adjusting the total shortfall amount (\$1,259,016) in order to account for the State's inability to control the types of institutions at which students use the financial aid, thus removing the portion of the shortfall beyond the 16.84 percent reduction in total student aid. The Department further adjusted the shortfall in order to account for the reductions in overall appropriations, thus determining a restoration amount (\$345,422) that would bring cuts to financial aid for students attending private institutions in line with reductions in overall aid and total appropriations.

The Department understands that the State may need additional time to make these funds available. As such, if the State submits an assurance, signed by the Governor, of its intent to provide such support within 12 months, the Department will grant the State a year to provide this additional support. If the Department receives such an assurance by September 26, 2011, the Department will obligate the State's FFY 2011 CACG award but place a hold on drawdowns of the funds until the State provides the Department with evidence that the additional support has been provided. If no assurance is provided, the Department will not obligate the State's FFY 2011 CACG award and the State may apply for CACG funding in FFY 2010, at which time the State will need to provide evidence that it has met the maintenance of effort obligations under section 137(a) of the HEA for SFY 2011.

The Department recognizes that this process is different than that faced by the State in FFY 2010, when the State was allowed to draw down its CACG award before the State provided evidence that the funds had been restored. However, in the Department's letter of December 3, 2010, the Department indicated that, in future years, States who failed to meet the requirements of section 137(a) and did not receive a waiver would be required to restore funding to higher education prior to receiving funds under the CACG Program.

The Department retains the right to conduct an audit or otherwise review the State's records pertaining to all CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirements and the CACG awards as required by 34 C.F.R. §80.42.

If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION**

**THE ASSISTANT SECRETARY**

February 14, 2012

Mr. Thomas A. Mullaney  
Executive Director/State Budget Officer  
Department of Administration, Budget Office  
State of Rhode Island and Providence Plantations  
One Capitol Hill  
Providence, RI 02908-5886

Dear Mr. Mullaney:

This letter is in response to your letter dated December 28, 2011, in which you indicate that the State of Rhode Island has taken the necessary steps to address the State's failure to meet the maintenance of effort requirements of section 137 of the Higher Education Act of 1965, as amended (HEA). The U.S. Department of Education (Department) appreciates your responsiveness to our request for additional documentation regarding this matter.

Under section 137 of the HEA, States are required to provide at least the same amount of financial support for public institutions of higher education and financial aid for students attending private institutions of higher education as they did, on average, during the preceding five State fiscal years (SFYs). States that fail to meet these requirements may not receive funds under the College Access Challenge Grant (CACG) program authorized by section 781 of the HEA, unless they receive a waiver of those requirements or make significant efforts to correct the violation. In the Department's letter of September 22, 2011, we denied the State of Rhode Island's request for a waiver of the maintenance of effort requirements of the HEA and determined that the State was required to make available an additional \$4,162,132 to public institutions of higher education (exclusive of capital expenditures and research and development costs) and an additional \$345,422 in financial aid to students attending private institutions of higher education to receive funds under the CACG program for Federal fiscal year (FFY) 2011.

In a letter from Ms. Deborah Grossman-Garber dated November 30, 2011, the State indicated that it wished to count \$4,162,132 of State Fiscal Stabilization Funds (SFSF), made available under the American Recovery and Reinvestment Act of 2009 (ARRA), as State funds for purposes of meeting the requirements of section 137(d) of the HEA. The Department has reviewed that request and, under the authority in section 14012 of the ARRA, will permit the State to count these SFSF funds as SFY 2010 expenditures for purposes of determining the State's compliance with section 137 of the HEA.

Your letter dated December 28, 2011 also provides evidence that the State of Rhode Island has taken the following actions to make additional financial aid funds available to students attending private institutions of higher education:

- Reduced funding to administration line items within the Rhode Island Higher Education Assistance Authority (RIHEAA) enacted budget;
- Increased funding for “Scholarships/Loans/Ed. Grants” line item in the State’s Tuition Savings Program by \$92,000; and
- Increased funding for the “Scholarships/Loans/Ed. Grants” line item in the RIHEAA enacted budget by \$255,170.

Documentation of these transfers was included in your letter in the form of a memorandum from you to Mr. Marc Leonetti, State Controller, dated December 22, 2011, requesting that the allotments be revised as described. The memorandum included a spreadsheet detailing the transfer of funds from non-grant lines to grant/scholarship lines in the respective accounts. The Department reviewed these documents and determined that the State has provided adequate evidence that it has made an additional \$347,170 in financial aid available to students attending private institutions of higher education.

At this time, the Department has determined that Rhode Island has met the standard of section 137(d) of the HEA and has demonstrated a significant effort to correct its maintenance of effort violation. Therefore, the Department will allow the State of Rhode Island to draw down its FFY 2011 award under the CACG program. The Department considers this issue resolved.

As outlined in the Department’s September 22, 2011, letter, the State must count the SFSF funds and additional financial aid funds as SFY 2010 expenditures in future years when calculating its obligations under section 137(a) of the HEA.

Please note that the Department retains the right to conduct an audit or otherwise review your records pertaining to the CACG award. Therefore, the State must retain all records relating to the maintenance of effort requirement and the CACG grants as required by 34 C.F.R. §80.42.

The Department appreciates Rhode Island’s efforts to resolve its maintenance of effort issues. We look forward to working with you to increase college access and success for underprivileged students. If you have questions regarding this information, you may contact Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or [debra.saunders-white@ed.gov](mailto:debra.saunders-white@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 2, 2011

Dr. Karen Woodfaulk  
South Carolina Commission on Higher Education  
1333 Main Street, Suite 200  
Columbia, SC 29201

Dear Dr. Woodfaulk:

This letter is in response to your June 9, 2011 letter (supplemented by additional information provided by your staff on June 24, June 29, June 30, July 14, July 21, and July 26, 2011), in which the State of South Carolina requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time your staff took to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide support for higher education that is equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) Program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Department is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for higher education.

In considering all of the information provided by the State, we have determined that South Carolina has met the maintenance of effort requirements under section 137(a) of the HEA in State fiscal year 2010 and, therefore, does not require a waiver of those requirements to receive CACG funds in Federal fiscal year 2011.<sup>1</sup>

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<sup>1</sup> The amount reported for support for public institutions of higher education includes \$121,694,766 in State Fiscal Stabilization Funds that South Carolina made available to public institutions of higher education in SFY 2010 and has proposed to treat as State funds for purposes of meeting the HEA maintenance of effort requirement. South Carolina has confirmed that these funds were not used for capital expenditures or research and development costs. The Department approves the use of these SFSF funds to meet the HEA maintenance of effort requirement.

The Department will award South Carolina its Federal fiscal year 2011 CACG Program grant based on the data and certification that the State has submitted.

The Department retains the right to conduct an audit or otherwise review your records pertaining to all CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirements and the CACG awards as required by 34 C.F.R. §80.42.

We appreciate your commitment to higher education and look forward to continued collaboration on its behalf. If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 2, 2011

Mr. Roger Campbell  
Director  
Office of Indian Education  
South Dakota Department of Education  
800 Governors Drive  
Pierre, SD 57501-2294

Dear Mr. Campbell:

This letter is in response to your May 31, 2011 letter (supplemented by additional information provided by your staff on June 14 and July 26, 2011), in which the State of South Dakota requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time staff took to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide support for higher education that is equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) Program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Department is permitted to waive these requirements for a State, for one fiscal year at a time, if it is determined that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for higher education.

In considering all of the information provided by the State, we have determined that the State of South Dakota met the maintenance of effort requirements under section 137(a) of the HEA in State fiscal year 2010 and, therefore, does not need a waiver of those requirements in order to receive funds under the CACG Program in Federal fiscal year 2011.

The Department will award South Dakota its Federal fiscal year 2011 CACG Program grant based on the data and certifications the State has submitted. The Department retains the right to conduct an audit or otherwise review your records pertaining to all CACG awards. Therefore,

the State must retain all records relating to the maintenance of effort requirements and the CACG awards as required by 34 C.F.R. §80.42.

We appreciate your commitment to higher education and look forward to our continued collaboration. If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 22, 2011

Ms. Paula C. Fisher  
Director  
College Access Challenge Grant &  
Senior Associate of Academic Affairs  
State Council of Higher Education for Virginia  
101 N. 14th Street  
James Monroe Building, 9th Floor  
Richmond, VA 23219

Dear Ms. Fisher:

This letter is in response to your May 31, 2011 letter (supplemented by additional information provided on June 8, July 18, and August 12, 2011) in which the State of Virginia requests a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time staff took to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide funding for higher education in an amount equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). A State that does not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) Program authorized by section 781 of the HEA, 20 U.S.C. §1141. The U.S. Department of Education (Department) is permitted to waive these requirements for a State, for one fiscal year at a time, if he determines that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for the nation's institutions of higher education.

Virginia has provided data indicating that the State provided \$1,623,122,106 in support for public institutions of higher education in State fiscal year (SFY) 2010, which was \$8,564,322 less than the average amount it provided over the preceding five State fiscal years (SFY 2005 – SFY 2009) – a reduction of 0.52 percent. That same year, the State provided \$58,831,933 in support for financial aid for students attending private institutions of higher education, which was \$8,384,030 higher than the average amount it provided over the preceding five State fiscal years – an increase of 16.62 percent.

Virginia's total State revenues decreased by 7.56 percent and its total State appropriations decreased by 6.52 percent in SFY 2010 from the prior five year average. However, data submitted by the State also indicate that total State revenues exceeded total State appropriations by \$611,119,435 in SFY 2010, well beyond the amount necessary to maintain the State's required level of financial support for higher education in SFY 2010. While we recognize that total State appropriations decreased, Virginia's data establish that it had the financial resources available to meet the requirements of section 137 of the HEA and did not do so.

In considering all of the information provided, we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2010 that prevented it from meeting its obligations under section 137(a) of the HEA. Accordingly, we have determined that it would not be equitable to grant a waiver under section 137(c) of the HEA.

When a State fails to maintain State financial support at the level required by law, section 137(d) of the HEA directs that the "Secretary shall withhold...any amount that would otherwise be available to the State...until such State has made significant efforts to correct the violation." At this time, Virginia cannot receive an award for Federal fiscal year (FFY) 2011 under the CACG Program because it has not met the maintenance of effort requirement nor received a waiver of that requirement. However, if Virginia makes significant efforts to correct the violation, the Department will provide Virginia with its full FFY 2011 CACG Program grant award.

Because we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2010 that prevented it from maintaining its required level of support under section 137(a) of the HEA, the Department has determined that the State must make an additional \$8,564,322 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) – the amount needed to fully restore State reductions in support for higher education in SFY 2010 – to meet stand of "significant efforts" set out in the HEA. If Virginia makes these additional funds available, these funds would be counted as SFY 2010 funds for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

The Department understands that the State may need additional time to make these funds available. As such, if the State submits an assurance, signed by the Governor, of its intent to provide such support within 12 months, the Department will allow the State a year to provide this additional support. If the Department receives such an assurance by September 26, 2011, the Department will obligate the State's FFY 2011 CACG award but place a hold on drawdown of the funds until the State provides the Department with evidence that the additional support has been provided. If no assurance is provided, the Department will not obligate the State's FFY 2011 CACG award and the State may reapply for CACG funding in FFY 2012, at which time the State will need to provide evidence that it has met the maintenance of effort obligations under section 137(a) of the HEA for SFY 2011.

The Department retains the right to conduct an audit or otherwise review the State's records pertaining to prior CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirement and the CACG awards as required by 34 C.F.R. §80.42.

If you have questions regarding this information, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

October 7, 2011

Mr. Peter Blake  
Interim Director  
Commonwealth of Virginia  
State Council of Higher Education for Virginia  
James Monroe Building  
101 North Fourteenth Street  
Richmond, VA 23219

Dear Mr. Blake:

Thank you for your September 29, 2011 letter in response to the U.S. Department of Education's (Department) letter of September 22, 2011, in which the Department denied Virginia's request for a waiver of the maintenance of effort requirements of section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f.

In your September 29 letter, you indicated that Virginia wishes to count \$8,564,322 of its State fiscal year (SFY) 2011 increase in State funding for higher education as SFY 2010 expenditures for the purposes of meeting the maintenance of effort requirements of section 137(a) of the HEA. In a communication dated October 4, 2011, the State clarified that these additional funds were State Fiscal Stabilization Funds (SFSF), made available to the State under the American Recovery and Reinvestment Act of 2009 (ARRA). The State further indicated that these funds were not used for capital expenses or research and development costs.

The Department has reviewed your request and, under the authority in section 14012 of the ARRA, will permit the State to count these SFSF funds as SFY 2010 expenditures for purposes of determining the State's compliance with the maintenance of effort requirements in section 137 of the HEA. The Department has determined that the State has made significant efforts to correct its violation in accordance with section 137(d) of the HEA and, therefore, the Department will now allow the State to draw down its full Federal fiscal year 2011 award in the College Access Challenge Grant (CACG) program. The Department considers this issue resolved.

As outlined in the Department's September 22, 2011 letter, the State will be required to count the SFSF funds discussed above as SFY 2010 expenditures in future years when calculating its obligations under section 137(a) of the HEA.

The Department appreciates Virginia's efforts to resolve its maintenance of effort issues, and we look forward to working with you to increase college access and success for underprivileged students.

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 8, 2011

Mr. Weiya Liang  
Director, Washington State GEAR UP and College Access  
Challenge Grant Programs  
Higher Education Coordinating Board  
917 Lakeridge Way SW  
P.O. Box 43430  
Olympia, WA 98504

Dear Mr. Liang:

This letter is in response to your May 24, 2011 letter (supplemented by additional information provided by your staff on June 15 and June 18, 2011) in which the State of Washington requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. We appreciate the time taken to provide the initial and supplemental information.

Under section 137(a) of the HEA, a State must provide funding for higher education in an amount equal to or greater than the average amount provided over the prior five fiscal years for both (a) public institutions of higher education (excluding capital expenses and research and development costs) and (b) private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges). A State that does not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) program authorized by section 781 of the HEA, 20 U.S.C. §1141. The Secretary may waive these requirements for a State, for one fiscal year at a time, if he determines that granting a waiver would be equitable due to exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State. However, we execute this waiver authority carefully and reluctantly, given the importance we place on maintaining State fiscal support for the nation's institutions of higher education.

Washington has provided data indicating that the State provided \$1,521,244,709 for public institutions of higher education in State Fiscal Year (SFY) 2010, \$40,628,621 less than the average amount provided over the preceding five State fiscal years (SFY 2005 – SFY 2009)— a reduction of 2.60 percent.<sup>1</sup> During the same year, Washington made \$39,969,970 available for financial aid for students attending private institutions of higher education in SFY 2010, approximately 14.64 percent more than the average amount it provided during the preceding five-year period.

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<sup>1</sup> The SFY 2010 appropriations level for public institutions of higher education includes both operational support and student financial aid available to students attending public institutions of higher education. Data from the State indicate that operational support declined \$83,721,587 from the average amount provided during preceding five fiscal years – a reduction of 5.97 percent.

Washington's total State revenues increased by 0.46 percent in SFY 2010 from the prior five-year average and 3.68 percent from SFY 2009. In addition, the State's total appropriations increased by 0.78 percent in SFY 2010 from the prior five-year average. Even though the State's revenues and total appropriations increased from the prior five-year average, the State provided 2.60 percent less for public institutions of higher education in SFY 2010, compared to the prior five-year average.

In considering the information provided, we have determined that the State did not face exceptional or uncontrollable circumstances in FY 2010 that would have prevented it from meeting its obligations under section 137(a) of the HEA. Accordingly, we have determined that it would not be equitable to grant a waiver under section 137(c) of the HEA.

When a State fails to maintain State financial support at the level required by law, section 137(d) of the HEA directs that the "Secretary shall withhold... any amount that would otherwise be available to the State... until such State has made significant efforts to correct the violation." At this time, Washington cannot receive an award for Federal fiscal year (FFY) 2011 under the CACG program because it has not met the maintenance of effort requirements related to State support for public institutions of higher education nor received a waiver of those requirements. However, if Washington makes significant efforts to correct the violation, the Department will allow the State to receive its full FFY 2011 award in the CACG program.

Because we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2010 that prevented it from maintaining its required level of support under section 137(a) of the HEA, the Department has determined that the State must make available an additional \$40,628,621 for public institutions of higher education (exclusive of capital expenditures and research and development costs) – the amount needed to fully restore the shortfall in State support in SFY 2010 - to meet the standard of "significant efforts" set out in the HEA. If Washington makes the additional funds available, these funds would be counted as SFY 2010 expenditures for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

The Department understands that the State may need additional time to make these funds available. As such, if the State submits an assurance, signed by the Governor, of its intent to provide such support within 12 months, the Department will grant the State a year to provide this additional support. If the Department receives such an assurance by September 26, 2011, the Department will obligate the State's FFY 2011 CACG award but place a hold on drawdown of the funds until the State provides the Department with evidence that the additional support has been provided. If no assurance is provided, the Department will not obligate the State's FFY 2011 CACG award and the State may reapply for CACG funding in FFY 2012, at which time the State will need to provide evidence that it has met the maintenance of effort obligations under section 137(a) of the HEA for SFY 2011.

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The Department retains the right to conduct an audit or otherwise review your records pertaining to prior CACG awards. Therefore, the State must retain all records relating to the maintenance of effort requirements and the CACG grants as required by 34 C.F.R. §80.42.

If you have questions regarding this letter or any information herein, you may contact the CACG Program Manager, Karmon Simms-Coates, at 202-502-7807 or [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov).

Sincerely,

/s/

Eduardo M. Ochoa



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

September 28, 2011

Mr. Weiya Liang  
Director  
Washington State College Access Challenge Grant  
917 Lakeridge Way SW  
P.O. Box 43430  
Olympia, WA 98504-3430

Dear Mr. Liang:

Thank you for your letter September 20, 2011 in response to the U.S. Department of Education's (Department) letter of September 8, 2011, in which the Department denied Washington's request for a waiver of the maintenance of effort requirements of section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f.

In your response, you indicated that Washington wishes to count \$40,628,621 of State Fiscal Stabilization Funds (SFSF), made available under the American Recovery and Reinvestment Act of 2009, as State fiscal year (SFY) 2010 expenditures for the purposes of meeting the maintenance of effort requirements of section 137(a) of the HEA. You further indicated that these funds were not used for capital expenses or research and development costs.

The Department has reviewed your request and, under the authority in section 14012 of the AARA, will permit the State to count these SFSF funds as SFY 2010 expenditures as we review the State's obligations under section 137 of the HEA. Accordingly, we have determined that the State has met the maintenance of effort requirements under section 137(a) of the HEA in State fiscal year 2010 and, therefore, does not require a waiver of those requirements to receive CACG funds in Federal fiscal year (FFY) 2011. We will allow the State to receive its full FFY 2011 award in the College Access Challenge Grant (CACG) program. The Department considers this issue resolved.

As outlined in the Department's September 8, 2011 letter, the State will be required to count these additional funds as SFY 2010 expenditures in future years when calculating its obligations under section 137(a) of the HEA.

The Department appreciates Washington's efforts to resolve its maintenance of effort issues, and we look forward to working with you as you continue to increase college access and success for underprivileged students.

Sincerely,

/s/

Eduardo M. Ochoa