

College Access Challenge Grant Program

Maintenance of Effort

Waiver Determination Letters for 2012

U.S. Department of Education
Washington, DC 20006

Table of Contents

Alabama.....	3
Arizona	6
District of Columbia	14
Delaware	20
Florida.....	23
Iowa	26
Idaho	30
Kansas.....	36
Maryland.....	39
Michigan	42
Minnesota	45
Mississippi	48
New Jersey.....	51
New Mexico.....	54
Nevada	62
New York.....	65
Ohio	68
Oregon	72
Pennsylvania	75
Puerto Rico	79
Rhode Island	82
South Carolina	86
Virginia	94
Washington	100

Alabama

Ms. Margaret Smith
Education Administrator
Career and Technical Education
Alabama Department of Education
P.O. Box 302101
Montgomery, AL 36130-2101

Dear Ms. Smith:

This letter is in response to Dr. Thomas Bice's June 1, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 11, June 15, June 26, June 28, July 11, July 12, August 3, August 6, and August 30, 2012 and via conference calls on August 3 and August 14, 2012) 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 your staff took to provide the information. Based on our review of that information, the Department has determined that it would be equitable to grant Alabama a waiver of the requirements of section 137(a) of the HEA for State Fiscal Year (SFY) 2011.

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.

Alabama provided data indicating that total State revenues decreased by 11.05 percent in SFY 2011 from the preceding five-year average (SFY 2006-SFY 2010). As indicated in the request, the State reduced financial support for public institutions of higher education by \$77,290,902 in SFY 2011 compared to the preceding five-year average – a reduction of 5.25 percent.¹ The reduction in support

¹ The State requested that its calculation of State support for public institutions of higher education in SFY 2011 include \$121,198,736 in State Fiscal Stabilization Funds, made available to the State under the American Recovery and Reinvestment Act of 2009 (ARRA). Under the authority in section 14012 of the ARRA, the Department considers these SFY 2011 State expenditures for purposes of determining the State's compliance with the maintenance of effort requirements in section 137 of the HEA.

for public institutions of higher education (5.25 percent) was smaller than the percentage reduction in overall State appropriations (7.73 percent) from the preceding five-year average.

Additionally, the State reduced financial support for student aid for students attending private institutions of higher education by \$540,269 in SFY 2011 compared to the preceding five-year average – a reduction of 14.84 percent. However, the State also indicated that student financial aid awards are made based on student eligibility with no consideration given to whether a student chooses to attend a public or private institution of higher education. Therefore, although Alabama controls the overall appropriation for student financial aid, it has no discretion over whether the funds are used to attend a public or a private institution. Data from the State indicate that the overall appropriation for student financial aid increased by \$171,043 in SFY 2011 over the preceding five-year average – an increase of 1.87 percent.

In considering all of the information provided by the State, we believe that Alabama faced a difficult financial situation in SFY 2011. While it is regrettable that Alabama cut support for public institutions of higher education, we recognize that these reductions in support were relatively small compared to the reduction in total State appropriations. 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 Alabama with its full Federal fiscal year 2012 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.

If you have questions regarding this letter or any information herein, you may contact Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Arizona

Ms. Debra Raeder-Gay
Associate Director
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 May 30, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on May 23, June 26, and July 20, 2012 and via conference call on July 16 and July 24, 2012) in which the State of Arizona 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. Based on our review of that information, the Department has decided that it would not be equitable to grant Arizona a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2011.

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 to the Department indicating that State support for public institutions of higher education decreased by \$77,284,175 in SFY 2011 from the preceding five-year average (SFY 2006 – SFY 2010) – a decrease of 7.25 percent. As indicated in Arizona's waiver request, the State reduced financial support for student aid for students attending private institutions of higher education by \$897,699 in SFY 2011 compared to the preceding five-year average – a reduction of 99.67 percent. However, the State also indicated that student financial aid awards are made based on student eligibility with no consideration given to whether a student chooses to attend a public or private institution of higher education. Therefore, although Arizona controls the overall appropriation for student financial aid, it has no discretion over whether the funds are used to attend a public or a private

institution. Data from the State indicate that the overall appropriation for student financial aid decreased by \$2,756,040 in SFY 2011 from the preceding five-year average – a decrease of 69.30 percent.

Arizona's total State revenues decreased by 10.10 percent in SFY 2011 from the preceding five-year period. While we recognize that the total State appropriations decreased by 8.91 percent, we considered the fact that the reductions in support for financial aid for students attending private institutions of higher education (99.67 percent) and total State financial aid (69.30 percent) were greater than the percentage declines in overall State appropriations (8.91 percent) and overall State revenue (10.10 percent) from the preceding five-year average.

In considering all of the information provided, we have determined that it would not be equitable to grant the State a waiver of the requirements of section 137(a) of the HEA due to exceptional or uncontrollable circumstances in SFY 2011.

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, Arizona cannot receive an award for Federal fiscal year (FFY) 2012 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 2012 award in the CACG program.

To meet the standard of "significant effort" set out in the HEA and receive its CACG award for FFY 2012, the State must make an additional \$543,943 available in support for financial aid for students attending private institutions of higher education – the amount needed to bring reductions in State support for financial aid for students attending private institutions to the level of reductions to total State appropriations.¹ If Arizona makes these additional funds available, these funds would be counted as SFY 2011 funds for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

If the State submits an assurance, signed by the Governor, of its intent to provide this additional financial support, the Department will allow the State until September 1, 2013 to provide this additional funding. If the Department receives such an assurance by September 1, 2012, the

¹ The Department determined this restoration amount for financial aid for students attending private institutions by adjusting the total shortfall amount (\$897,699) 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 69.3 percent reduction in total student aid. The Department further adjusted the shortfall to account for the reductions in overall appropriations, thus determining a restoration amount (\$543,943) that would bring cuts to financial aid for students attending private institutions in line with reductions in overall aid and total appropriations. Because the State controls the overall appropriation for student financial aid but has no discretion over whether the funds are used to attend a public or a private institution, the Department would consider an increase in the total State appropriation for student financial aid as restoration of financial aid for students attending private institutions.

Department will obligate the State's FFY 2012 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 2012 CACG award and the State may reapply for CACG funding in FFY 2013.

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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Ms. Rebecca Gau
Director
Governor's Office of Education Innovation
1700 West Washington Street, Suite 300
Phoenix, AZ 85007

Dear Ms. Gau:

This letter is in response to Governor Janice Brewer's October 23, 2012 letter to the U.S. Department of Education (the Department), in response to the Department's letter of August 8, 2012, in which the Department denied the State of Arizona'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 Governor Brewer's letter, she indicated that Arizona wishes to count \$543,943 of the funding made available under the Special Postsecondary Education Grant (SPEG) program in State fiscal year (SFY) 2013 as a "significant effort" to correct the State's maintenance of effort violation in SFY 2011, in accordance with the Department's August 8, 2012 letter and section 137 of the HEA. As described in the letter and accompanying documentation, the SPEG program provides support for financial aid for students attending private institutions of higher education in the State.

The Department has reviewed your request and will allow the State to count \$543,943 of the funds made available under the SPEG program in SFY 2013 as a "significant effort" from the State to correct its SFY 2011 maintenance of effort violation. 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 2012 award in the College Access Challenge Grant (CACG) program. The Department considers this issue resolved.

As outlined in the Department's August 8, 2012 letter, the State will be required to count these additional funds as SFY 2011 expenditures in future years when calculating its obligations under section 137(a) of the HEA.

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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Ms. Rebecca Gau
Director
Governor's Office of Education Innovation
1700 West Washington Street, Suite 300
Phoenix, AZ 85007

Dear Ms. Gau:

This letter is in response to Governor Janice Brewer's October 23, 2012 letter to the U.S. Department of Education (the Department), in response to the Department's letter of August 8, 2012, in which the Department denied the State of Arizona'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 Governor Brewer's letter, she indicated that Arizona wishes to count \$543,943 of the funding made available under the Special Postsecondary Education Grant (SPEG) program in State fiscal year (SFY) 2013 as a "significant effort" to correct the State's maintenance of effort violation in SFY 2011, in accordance with the Department's August 8, 2012 letter and section 137 of the HEA. As described in the letter and accompanying documentation, the SPEG program provides support for financial aid for students attending private institutions of higher education in the State.

The Department has reviewed your request and will allow the State to count \$543,943 of the funds made available under the SPEG program in SFY 2013 as a "significant effort" from the State to correct its SFY 2011 maintenance of effort violation. 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 2012 award in the College Access Challenge Grant (CACG) program. The Department considers this issue resolved.

As outlined in the Department's August 8, 2012 letter, the State will be required to count these additional funds as SFY 2011 expenditures in future years when calculating its obligations under section 137(a) of the HEA.

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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

District of Columbia

Ms. Melissa McKnight
Office of the State Superintendent of Education
Government of the District of Columbia
810 First Street, NE, Third Floor
Washington, DC 20002

Dear Ms. McKnight:

This letter is in response to your July 26, 2012 e-mail to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on May 30, June 11, June 15, June 28, July 18, and July 19, 2012 and via conference calls on June 28 and July 26, 2012) in which the District of Columbia (the District) 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. Based on our review of that information, the Department has determined that it would not be equitable to grant the District a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2011.

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 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.

The District provided data to the Department indicating that its support for public institutions of higher education increased by \$2,505,351 in SFY 2011 from the preceding five-year average (SFY 2006 – SFY 2010) – an increase of 4.13 percent. The data submitted by the District to the Department shows that the District decreased financial support for student aid for students attending private institutions of higher education by \$513,002 in SFY 2011 compared to the preceding five-year average – a decrease of 68.79 percent. However, the District also indicated that student financial aid awards are made based on student eligibility with no consideration given to whether a student chooses to attend a public or private institution of higher education. Therefore, although the District of Columbia controls the overall appropriation for student financial aid, it has no discretion over whether the funds are used to

attend a public or a private institution. Data from the District indicate that the overall appropriation for student financial aid decreased by \$1,135,062 in SFY 2011 from the preceding five-year average – a decrease of 49.67 percent.

The District of Columbia's total revenues increased by 8.20 percent in SFY 2011, compared to the preceding five-year average. Data submitted by the District also indicate that the total District revenues exceeded total appropriations by \$239,695,000 in SFY 2011, a substantial amount relative to the District's overall budget and well beyond the amount necessary to maintain the District's required level of financial support for higher education in SFY 2011. The District'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 District did not face an exceptional or uncontrollable circumstance in SFY 2011 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, the District cannot receive an award for Federal fiscal year (FFY) 2012 under the CACG program because it has not met the maintenance of effort requirements nor received a waiver of those requirements. However, should the District make significant efforts to correct the violation, the Department will allow the District to receive its full FFY 2012 award in the CACG program.

Because we have determined that the District did not face an exceptional or uncontrollable circumstance in SFY 2011 that prevented it from maintaining its required level of support under section 137(a) of the HEA, the Department has determined that the District must make an additional \$370,425 available in support for financial aid for students attending private institutions of higher education¹ to meet the standard of "significant efforts" set out in the HEA.² If the District makes these additional funds available, these funds would be counted as SFY 2011 funds for purposes of calculating the District's maintenance of effort obligations in future years under the HEA.

If the District submits an assurance, signed by the Mayor, of its intent to provide this additional financial support, the Department will allow the District until September 1, 2013 to provide this additional funding. If the Department receives such an assurance by September 1, 2012, the Department will obligate the District's FFY 2012 CACG award but place a hold on drawdown of the

¹ The Department determined the restoration amount for financial aid for students attending private institutions by adjusting the total shortfall amount (\$513,002) in order to account for the District's inability to control the types of institutions at which students use the financial aid, thus removing the portion of the shortfall beyond the 49.67 percent reduction in total student aid.

² As the District of Columbia does not currently have a dedicated source of financial aid for students attending private institutions in the District, the Department would consider the District's making an additional \$370,425 available in the DCLEAP program such a "significant effort."

funds until the District provides the Department with evidence that the additional support has been provided. If no assurance is received from the District, the Department will not obligate the District's FFY 2012 CACG award and the District may reapply for CACG funding in FFY 2013.

The Department retains the right to conduct an audit or otherwise review your records pertaining to all CACG awards. Therefore, the District 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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Ms. Melissa McKnight
Office of the State Superintendent of Education
Government of the District of Columbia
810 First Street, NE, Third Floor
Washington, DC 20002

Dear Ms. McKnight:

This letter is in response to Mayor Vincent Gray's August 29, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on September 6, 2012), in response to the Department's letter of August 13, 2012, in which the Department denied the District of Columbia's (the District'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 Mayor Gray's letter, he indicated that the District wishes to count \$370,425 of funding made available under the DC College Fund (also referred to as the Mayor's Opportunity Fund) as its "significant efforts" to correct the District's maintenance of effort violation in District fiscal year (DFY) 2011, in accordance with the Department's August 13, 2012 letter and section 137 of the HEA. As described in your September 6, 2012 e-mail, this new program will provide \$1.59 million in DFY 2013 for need-based grants to eligible students from the District pursuing their first undergraduate degree at a public or private postsecondary institution in the District. Funding in the amount of \$600,000 has been allocated for students attending private institutions in the District and will be available beginning October 1, 2012.

The Department has reviewed your request and will allow the District to count these additional funds as a significant effort from the District to correct its DFY 2011 maintenance of effort violation. At this time, the Department has determined that the District has met the standard of section 137(d) of the HEA and will allow the District to receive its full Federal fiscal year 2012 award in the College Access Challenge Grant (CACG) program. The Department considers this issue resolved.

As outlined in the Department's August 13, 2012 letter, the District will be required to count these additional funds as DFY 2011 expenditures in future years when calculating its obligations under section 137(a) of the HEA. Additionally, having identified the DC College Fund program as a source of financial aid for students attending private institutions of higher education, the District will be required in future years to include support for this program when calculating its obligations under section 137(a) of the HEA.

The Department retains the right to conduct an audit or otherwise review your records pertaining to all CACG awards. Therefore, the District 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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Delaware

Ms. Maureen Laffey
Director
Higher Education Office
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 June 6, 2012 e-mail to Ms. Karmon Simms-Coates in which the State of Delaware 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. Your letter has been referred to me as Acting Assistant Secretary for Postsecondary Education, and I am pleased to respond.

We appreciate the time your staff took to provide the information. Based on our review of that information, the Department has decided to grant Delaware a waiver of the requirements of section 137(a) of the HEA for State Fiscal Year (SFY) 2011.

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.

Delaware provided data to the Department indicating that, in SFY 2011, State support for public institutions of higher education exceeded the preceding five-year average (SFY 2006 – SFY 2010) by \$1.¹ As indicated in Delaware's request for a waiver, the State reduced financial support for private institutions of higher education by \$82,833 in SFY 2011 compared to the preceding five-year average

¹ The State indicated that its calculation of State support for public institutions of higher education in SFY 2011 included \$9,227,231 in State Fiscal Stabilization Funds, made available to the State under the American Recovery and Reinvestment Act of 2009 (ARRA). Under the authority in section 14012 of the ARRA, the Department considers these as SFY 2011 State expenditures for purposes of determining the State's compliance with the maintenance of effort requirements in section 137 of the HEA.

– a reduction of 22.24 percent. However, the State also indicated that student financial aid awards are made based on student eligibility with no consideration of whether the student chooses to attend an institution that is public or private. Therefore, although Delaware controls the overall appropriation for student financial aid, it has no discretion over whether the funds are used to attend a public or a private institution. Data from the State indicate that the overall appropriation for student financial aid increased by \$934,600 in SFY 2011 over the preceding five-year average – an increase of 16.93 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 SFY 2011. Accordingly, the Department will provide Delaware with its full Federal fiscal year 2012 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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Florida

Mr. Levis Hughes
Chief of Student Financial Assistance
Florida Department of Education
325 W. Gaines Street
Tallahassee, FL 32399

Dear Mr. Hughes:

This letter is in response to your May 14, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on May 25, May 29, July 23, August 8, August 20, and August 21, 2012 and via conference call on August 14, 2012) in which the State of Florida 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. Based on our review of that information, the Department has determined that the State of Florida met the maintenance of effort requirements under section 137(a) of the HEA in State fiscal year (SFY) 2011.¹

During our review of Florida's waiver request, it became apparent that annual performance reports (APR) submitted by the State in May of 2011 and 2012 contained data for the wrong fiscal years, including data on State fiscal years that had not yet closed. For example, in the 2012 APR, Florida reported fiscal data on SFY 2012 instead of SFY 2011 in those rows labeled 2011. To ensure that we are making our maintenance of effort determinations based on actual appropriations from the same years in which we are making maintenance of effort determinations for other States, the Department used data the State provided on the State's SFY 2010-2011 fiscal support for higher education in determining whether the State met the maintenance of effort requirements for 2011. Using these data, the Department found that the State met the maintenance of effort requirements under section 137 of the HEA. Maintenance of effort data submitted by the State in future years should be consistent with this approach (e.g., data reported for SFY 2012 should reflect the 2011-2012 fiscal year).

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

¹ The Department refers to fiscal years by the calendar year in which the budget period ends. Therefore, "fiscal year 2011" refers to the fiscal year that spans 2010-2011.

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.

Florida provided data indicating that the State maintained financial support for public institutions of higher education in SFY 2011 compared to the preceding five-year average (SFY 2006-SFY 2010). Additionally, in SFY 2011, the State maintained support for financial aid for students attending private institutions.²

In considering all of the information provided by the State, we have determined that the State of Florida met the maintenance of effort requirements under section 137(a) of the HEA in SFY 2011 and, therefore, does not need a waiver of those requirements in order to receive funds under the CACG Program in Federal fiscal year (FFY) 2012. Accordingly, the Department will provide Florida with its full FFY 2012 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.

If you have questions regarding this letter or any information herein, you may contact Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

² In the State's September 6, 2012 e-mail, it indicated that it wished to count \$232,775,619 in State Fiscal Stabilization Funds (SFSF), made available under the American Recovery and Reinvestment Act of 2009 (ARRA), as State support for public institutions of higher education (IHEs) in SFY 2011. The State also indicated that it wished to count \$21,793,849 in SFSF-Government Services funds, made available under the American Recovery and Reinvestment Act of 2009 (ARRA), as State support for private institutions of higher education in SFY 2010, and an additional \$26,980,282 in SFSF-Government Services funds as State support for private institutions of higher education in SFY 2011. Under the authority in section 14012 of the ARRA, the Department considers these State expenditures for purposes of determining the State's compliance in this and future years with the maintenance of effort requirements in section 137 of the HEA.

Iowa

Ms. Nancy Ankeny
Iowa College Student Aid Commission
603 E. 12th Street, 5th Floor
Des Moines, IA 50319-9017

Dear Ms. Ankeny:

This letter is in response to Ms. Karen Misjak's May 30, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via conference call on August 21, 2012) in which the State of Iowa 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. Based on our review of that information, the Department has determined that it would not be equitable to grant Iowa a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2011.

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.

Iowa provided data to the Department indicating that State support for public institutions of higher education decreased by \$42,311,471 in SFY 2011 from the preceding five-year average (SFY 2006 – SFY 2010) – a decrease of 6.03 percent. As indicated in Iowa's waiver request, the State decreased expenditures for student aid for students attending private nonprofit institutions of higher education by \$2,834,881 in SFY 2011 compared to the preceding five-year average – a decrease of 5.18 percent. Data from the State indicate that the appropriations for financial aid available to students attending private institutions of higher education decreased by 3.87 percent in SFY 2011 from the preceding five-year average.

Data provided to the Department by Iowa indicate that the State's total revenues increased by 2.84 percent in SFY 2011 from the preceding five-year period. The data also indicate that Iowa's total State revenues exceeded total State appropriations by \$547,145,465 in SFY 2011, a substantial amount

relative to the State's overall budget in SFY 2011. Accordingly, Iowa's data demonstrate 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 2011 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) 2012 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 2012 award in the CACG program.

Because we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2011 that prevented it from maintaining its required level of support under section 137(a) of the HEA, the State must make an additional \$42,311,471 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and \$2,120,654 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 2011 – to meet the standard of "significant efforts" set out in the HEA.¹ If Iowa makes these additional funds available, these funds would be counted as SFY 2011 funds for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

If the State submits an assurance, signed by the Governor, of its intent to provide this additional financial support, the Department will allow the State until September 1, 2013 to provide this additional funding. If the Department receives such an assurance by September 17, 2012, the Department will obligate the State's FFY 2012 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 2012 CACG award and the State may reapply for CACG funding in FFY 2013.

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.

¹ The Department determined the restoration amount for financial aid for students attending private institutions by adjusting the total shortfall amount (\$2,834,881) 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 3.87 percent reduction in total student aid available to students attending private institutions.

If you have questions regarding this letter or any information herein, you may contact Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Idaho

Ms. Jessica Piper
Project Coordinator/CACG Program Director
Idaho State Board of Education
650 W. State Street
P.O. Box 83720
Boise, ID 83720-0037

Dear Ms. Piper:

This letter is in response to Mr. Mike Rush's May 31, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on May 25, May 30, July 9, and July 11, 2012 and via conference call on June 28, 2012) in which the State of Idaho 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. Based on our review of that information, the Department has determined that it would not be equitable to grant Idaho a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2011.

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.

Idaho provided data to the Department indicating that State support for public institutions of higher education decreased by \$3,501,913 in SFY 2011 from the preceding five-year average (SFY 2006 – SFY 2010) – a decrease of 0.86 percent. As indicated in Idaho's waiver request, the State reduced financial support for student aid for students attending private institutions of higher education by \$339,713 in SFY 2011 compared to the preceding five-year average – a reduction of 23.47 percent. However, the State also indicated that student financial aid awards are made based on student eligibility with no consideration given to whether a student chooses to attend a public or private institution of higher education. Therefore, although Idaho controls the overall appropriation for student financial aid, it has no discretion over whether the funds are used to attend a public or a private

institution. Data from the State indicate that the overall appropriation for student financial aid decreased by \$759,880 in SFY 2011 from the preceding five-year average – a decrease of 9.04 percent.

Idaho's total State revenues decreased by 5.12 percent in SFY 2011 from the preceding five-year period. While we recognize that the total State appropriations decreased by 3.80 percent, we considered the fact that the reductions in support for financial aid for students attending private institutions of higher education (23.47 percent) and total State financial aid (9.04 percent) were greater than the percentage declines in overall State appropriations (3.80 percent) and overall State revenue (5.12 percent) from the preceding five-year average.

In considering all of the information provided, we have determined that it would not be equitable to grant the State a waiver of the requirements of section 137(a) of the HEA due to exceptional or uncontrollable circumstances in SFY 2011.

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) 2012 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 2012 award in the CACG program.

Because the Department has determined that it would not be equitable to grant the State a waiver of section 137(a) of the HEA, the State must make an additional \$75,913 available in support for financial aid for students attending private institutions of higher education – the amount needed to bring reductions in State support for financial aid for students attending private institutions to the level of reductions to total State appropriations¹ – to meet the standard of "significant efforts" set out in the HEA.² If Idaho makes these additional funds available, these funds would be counted as SFY 2011 funds for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

If the State submits an assurance, signed by the Governor, of its intent to provide this additional financial support, the Department will allow the State until September 1, 2013 to provide this additional funding. If the Department receives such an assurance by September 1, 2012, the Department will obligate the State's FFY 2012 CACG award but place a hold on drawdown of the

¹ The Department determined this restoration amount for financial aid for students attending private institutions by adjusting the total shortfall amount (\$339,713) 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 9.04 percent reduction in total student aid. The Department further adjusted the shortfall to account for the reductions in overall appropriations, resulting in a restoration amount (\$75,913) that would bring cuts to financial aid for students attending private institutions in line with reductions in overall aid and total appropriations.

² As Idaho does not currently have a dedicated source of financial aid for students attending private institutions in the State, the Department would consider the State's making an additional \$370,425 available in the State's general aid program as "significant efforts" so long as such funds are available to students attending private institutions of higher education as well as those attending public institutions.

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 2012 CACG award and the State may reapply for CACG funding in FFY 2013.

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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Ms. Jessica Piper
Project Coordinator/CACG Program Director
Idaho State Board of Education
650 W. State Street
P.O. Box 83720
Boise, ID 83720-0037

Dear Ms. Piper:

This letter is in response to Mr. Matt Freeman's August 28, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on August 30, 2012). Mr. Freeman's letter was in response to the Department's letter of August 13, 2012, in which the Department denied the State of Idaho'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.

Mr. Freeman's letter requested that the Department permit the State to count \$75,913 of funding made available under the State's Dual Credit for Early Completers program as its "significant effort" to address the State's maintenance of effort violation in State fiscal year (SFY) 2011, in accordance with the Department's August 13, 2012 letter and section 137 of the HEA. As described in the letter, the Dual Credit for Early Completers program was first funded in SFY 2012 in the amount of \$842,400 and enables students who complete State high school graduation requirements prior to the last semester of twelfth grade to earn up to eighteen postsecondary credits during their last semester of high school. According to the State, both public and private institutions of higher education are eligible to participate in the Dual Credit for Early Completers program, and credits earned under this program are accrued at participating colleges.

The Department has reviewed your request and will allow the State to count the \$75,913 in funding as a significant effort from the State to correct its SFY 2011 maintenance of effort violation. 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 2012 award in the College Access Challenge Grant (CACG) program. The Department considers this issue resolved.

As outlined in the Department's August 13, 2012 letter, the State will be required to count these \$75,913 of additional funds as SFY 2011 expenditures in future years when calculating its obligations under section 137(a) of the HEA. Additionally, having identified the Dual Credit for Early Completers program as a source of financial aid for students attending private institutions of higher education, the State will be required in future years to include support for this program when calculating its obligations under section 137(a) of the HEA.

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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Kansas

Ms. Diane Lindeman
Director of Student Financial Assistance
Kansas Board of Regents
1000 SW Jackson, Suite 520
Topeka, KS 66612-1368

Dear Ms. Lindeman:

This letter is in response to your May 25, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on May 23 and August 2, 2012 and via conference call on July 18, 2012) 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 information. Based on our review of that information, the Department has determined that it would be equitable to grant Kansas a waiver of the requirements of section 137(a) of the HEA for State Fiscal Year (SFY) 2011.

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 financial resources decreased by 3.70 percent in SFY 2011 from the preceding five-year average (SFY 2006-SFY 2010). As indicated in the request, the State reduced financial support for public institutions of higher education by \$3,276,586 in SFY 2011 compared to the preceding five-year average – a reduction of 0.48 percent.¹ Additionally, in FY 2011, the State increased support for financial aid for students attending private institutions by 0.01 percent. The reduction in support for public institutions of higher education (0.48 percent) was equal to the

¹ In the State's August 2, 2012 communication, it indicated that it wished to count \$25,332,728 in State Fiscal Stabilization Funds, made available under the American Recovery and Reinvestment Act of 2009 (ARRA), as State support for public institutions of higher education in SFY 2011. Under the authority in section 14012 of the ARRA, the Department considers these SFY 2011 State expenditures for purposes of determining the State's compliance in this and future years with the maintenance of effort requirements in section 137 of the HEA.

percentage reduction in overall State appropriations (0.48 percent) and smaller than the reduction in total State resources (3.70 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 2011. 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 reduction in total State financial resources. 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 Kansas with its full Federal fiscal year 2012 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.

If you have questions regarding this letter or any information herein, you may contact Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Maryland

Dr. Danette G. Howard
Interim Secretary of Higher Education
Maryland Higher Education Commission
6 N. Liberty Street, 10th Floor
Baltimore, MD 21201

Dear Dr. Howard:

This letter is in response to your May 31, 2012 letter to Dr. Eduardo Ochoa in which the State of Maryland 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. Your letter has been referred to me as Acting Assistant Secretary for Postsecondary Education, and I am pleased to respond.

We appreciate the time your staff took to provide the information. Based on our review of that information, the Department has decided to grant Maryland a waiver of the requirements of section 137(a) of the HEA for State Fiscal Year (SFY) 2011.

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.

Maryland provided data to the Department indicating that State support for public institutions of higher education increased by \$99,159,063 in SFY 2011 over the preceding five-year average (SFY 2006 – SFY 2010) – an increase of 7.60 percent. As indicated in Maryland's waiver request, the State reduced financial support for student aid for students attending private institutions of higher education by \$1,127,852 in SFY 2011 compared to the preceding five-year average – a reduction of 2.17 percent. However, the State also indicated that student financial aid awards are made based on student eligibility with no consideration given to whether a student chooses to attend a public or private institution of higher education. Therefore, although Maryland controls the overall appropriation for student financial aid, it has no discretion over whether the funds are used to attend a public or a private institution. Data from the State indicate that the overall appropriation for student financial aid increased by \$568,345 in SFY 2011 over the preceding five-year average – an increase of 0.56 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 SFY 2011. Accordingly, the Department will provide Maryland with its full Federal fiscal year 2012 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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Michigan

Mr. Kyle Guerrant
Michigan Department of Education
P.O. Box 30008
Lansing, MI 48909

Dear Mr. Guerrant:

This letter addresses the State of Michigan's (Michigan's) receipt of funds under the College Access Challenge Grant (CACG) Program.

To receive a grant under the CACG Program, a State must meet 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 or be granted a waiver of those requirements. 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 CACG Program authorized by section 781 of the HEA, 20 U.S.C. §1141.

On May 15, 2012, Michigan submitted data to the Department demonstrating that the State did not meet the maintenance of effort requirements for State fiscal year (SFY) 2011. Michigan provided data indicating that State support for public institutions of higher education increased by \$4,580,394 in SFY 2011 from the preceding five-year average (SFY 2006 – SFY 2010) – an increase of 0.27 percent. The State reduced financial support for private institutions of higher education by \$24,070,240 in SFY 2011 compared to the preceding five-year average – a reduction of 100.00 percent.

The data we received demonstrate that Michigan failed to provide support for higher education that is equal to or greater than the average amount provided over the prior five fiscal years for private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges).

In an e-mail dated July 13, 2012, Mr. Louis Burgess notified the Department that Michigan would not be requesting a waiver of these requirements under §137(c) of the HEA. Therefore, Michigan will not receive an award under the CACG Program for Federal fiscal year 2012.

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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Minnesota

Dr. Nancy B. Walters
Program Manager
Minnesota Office of Higher Education
1450 Energy Park Drive, Suite 350
St. Paul, MN 55108

Dear Dr. Walters:

This letter is in response to the State of Minnesota's request for 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. Minnesota submitted its waiver request in its College Access Challenge Grant (CACG) Program Annual Performance Report for 2011-2012 submitted to the U.S. Department of Education (the Department) and supplemented by additional information provided via e-mail on May 29, May 31, June 6, July 11, July 19, and July 24, 2012 and via conference calls on July 11 and July 30, 2012.

We appreciate the time your staff took to provide the information. Based on our review of that information, the Department has determined it would be equitable to grant Minnesota a waiver of the requirements of section 137(a) of the HEA for State Fiscal Year (SFY) 2011.

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 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 to the Department indicating that State support for public institutions of higher education decreased by \$3,196,767 in the 2010-2011 biennium compared to the preceding three-biennium average (2004-2005, 2006-2007, and 2008-2009) – a decrease of 0.14 percent. As indicated in Minnesota's waiver request, the State increased financial support for student aid for students attending private institutions of higher education by \$9,011,655 in the 2010-2011 biennium compared to the preceding three-biennium average – an increase of 10.44 percent. The reduction in support for public institutions of higher education (0.14 percent) was smaller than the percentage reduction in overall State appropriations (3.85 percent) and the reduction in revenue (1.23 percent) from the preceding three-biennium average.

We note that Minnesota's request for a waiver of the requirements of section 137 of the HEA for SFY 2010 was considered, and granted, on the basis of data comparing SFY 2010 to the preceding five year average (SFY 2005-SFY 2009). Given that both SFY 2010 and SFY 2011 are in the same biennium for State budgeting purposes, the Department would not ordinarily allow a State to alter its methodology for calculating its maintenance of effort. However, Minnesota has demonstrated that a calculation of State support by biennium more accurately reflects the State's funding of higher education. As discussed previously with the State, Minnesota should continue to report financial support for higher education in future years using biennial data for the purpose of documenting its financial support for higher education in accordance with section 137 of the HEA and, if necessary, requesting a waiver of those requirements.¹

In considering all of the information provided by the State, we believe that the State of Minnesota faced a difficult financial situation in the 2010-2011 biennium. While it is regrettable that the State cut support for public institutions of higher education, this reduction in support was relatively small compared to the cuts in State appropriations overall and the reduction in revenue. Therefore, we have determined that it would be equitable to grant Minnesota a waiver of the requirements of section 137(a) of the HEA for the 2010-2011 biennium. Accordingly, the Department will provide Minnesota with its full Federal fiscal year (FFY) 2012 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.

If you have questions regarding this letter or any information herein, you may contact Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

¹ When submitting its request to change its calculation methodology, the State of Minnesota also provided sufficient data to demonstrate that use of a biennial calculation method would not have changed the Department's decision to grant Minnesota a waiver of the requirements of section 137 of the HEA in FFY 2011.

Mississippi

Ms. Marsha Watson
Director, College Knowledge Project
Office of Academic and Student Affairs
Mississippi Institutions of Higher Learning
3825 Ridgewood Road, Room 718
Jackson, MS 39211

Dear Ms. Watson:

This letter is in response to your May 31, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 13, June 18, June 26, and August 7, 2012 and via conference call on July 26, 2012) 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 information. Based on our review of that information, the Department has determined that it would be equitable to grant Mississippi a waiver of the requirements of section 137(a) of the HEA for State Fiscal Year (SFY) 2011.

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.

Mississippi provided data to the Department indicating that State support for public institutions of higher education in SFY 2011 was equal to the preceding five-year average (SFY 2006 – SFY 2010).¹ As indicated in Mississippi's waiver request, the State reduced financial support for student aid for students attending private institutions of higher education by \$530,202 in SFY 2011 compared to the

¹ The State indicated that its calculation of State support for public institutions of higher education in SFY 2011 included \$40,952,760 in State Fiscal Stabilization Funds, made available to the State under the American Recovery and Reinvestment Act of 2009 (ARRA). Under the authority in section 14012 of the ARRA, the Department considers these SFY 2011 State expenditures for purposes of determining the State's compliance with the maintenance of effort requirements in section 137 of the HEA.

preceding five-year average – a reduction of 10.88 percent. However, the State also indicated that student financial aid awards are made based on student eligibility with no consideration given to whether a student chooses to attend a public or private institution of higher education. Therefore, although Mississippi controls the overall appropriation for student financial aid, it has no discretion over whether the funds are used to attend a public or a private institution. Data from the State indicate that the overall appropriation for student financial aid increased by \$1,740,047 in SFY 2011 over the preceding five-year average – an increase of 5.93 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 SFY 2011. Accordingly, the Department will provide Mississippi with its full Federal fiscal year 2012 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.

If you have questions regarding this letter or any information herein, you may contact Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

New Jersey

Ms. Iris Duffield
New Jersey Higher Education
P.O. Box 542
Trenton, NJ 08625

Dear Ms. Duffield:

This letter is in response to Ms. Charlene Holzbaaur's May 30, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via conference call on August 22, 2012 and via e-mail on September 6 and September 12, 2012)¹, in which the State of New Jersey 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. Based on our review of that information, which was considered in conjunction with the State's pending request for a waiver of the maintenance of effort requirements of the Individuals with Disabilities Education Act (IDEA) under 20 U.S.C. §1412(a)(18)(C)(i), the Department has determined that the State of New Jersey met the maintenance of effort requirements under section 137(a) of the HEA in State fiscal year (SFY) 2011.²

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

¹ The State of New Jersey also requested a waiver of the maintenance of effort requirements of the Individuals with Disabilities Education Act (IDEA) under 20 U.S.C. §1412(a)(18)(C)(i) for State fiscal year 2011. As the State's May 30, 2012 data submission to the Department indicated that the State had failed to meet the requirements of section 137 of the Higher Education Act of 1965, as amended (HEA), the Department worked closely with the State to ensure that New Jersey submitted consistent data on State revenues and appropriations across the two requests. During this process, the Department received further communication from the State pertinent to its request under the HEA on June 7 and June 26, 2012, and traveled to the State to meet with representatives from the State's Office of Management and Budget on August 8, 2012.

² Data provided by the State in its May 30, 2012 submission indicated that the State failed to meet the requirements of section 137 of the HEA. However, during an August 22, 2012 conference call with the State, officials from New Jersey indicated that they may have incorrectly provided expenditure data rather than appropriations data for the years in question. The State submitted appropriations data on September 6, 2012 which indicated that it had met the requirements of section 137 of the HEA.

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 New Jersey met the maintenance of effort requirements under section 137(a) of the HEA in SFY 2011 and, therefore, does not need a waiver of those requirements in order to receive funds under the CACG Program in Federal fiscal year (FFY) 2012. Accordingly, the Department has provided New Jersey with its full FFY 2012 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.

If you have questions regarding this letter or any information herein, you may contact Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

New Mexico

Mr. Kevin Deiters
Executive Director
Education Trust Board of New Mexico
2048 Galisteo Street
Santa Fe, NM 87505

Dear Mr. Deiters:

This letter is in response to Secretary of Higher Education José Garcia's May 31, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 8, June 18, June 22, June 27, July 20, August 1, September 17, and September 20, 2012 and via conference calls on July 17 and August 28, 2012) 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. As noted in the Department's e-mail of August 21, 2012 and in the conference call on August 28, 2012, the State of New Mexico has also requested a waiver of the maintenance of effort requirements of the Individuals with Disabilities Education Act (IDEA) under 20 U.S.C. §1412(a)(18)(C)(i) for State fiscal years (SFYs) 2010 and 2011. The data regarding total State revenues and appropriations initially provided by the State in conjunction with its request for a waiver of the requirements of section 137 of the HEA did not align with those provided in its waiver request under the IDEA. In a conference call on August 28, 2012, the State clarified that the Department should use the total State revenues and appropriations data submitted in conjunction with its IDEA waiver request for its request under the HEA. The State subsequently provided data consistent with its request under the IDEA for each of the fiscal years under consideration in its request under the HEA (SFY 2006 – SFY 2011) to the Department on September 17, 2012. This data submission also included new data regarding its support for public institutions of higher education. The State then submitted additional data in conjunction with its IDEA waiver request on September 24, 2012 that was inconsistent with its September 17 submission.

The Department has an interest in ensuring that waiver decisions across programs are based on accurate and consistent State-level financial data. To base our decisions on varying or incomplete data would undermine the integrity and fairness of our waiver review process and potentially lead to negative outcomes for students. Given the timing of the submission of new data relating to the HEA waiver request, the Department did not have sufficient time before the end of Federal fiscal year (FFY) 2012 to both resolve outstanding data issues and determine whether it would be equitable to grant the State's waiver request under the HEA.

As you are aware, FFY 2012 funds made available under the College Access Challenge Grant (CACG) Program would have lapsed unless they were obligated prior to September 30, 2012. Therefore, the

Department has taken steps to ensure that the funds for New Mexico's CACG allocation did not lapse at the close of FFY 2012. To accomplish this, the Department has obligated the State's FFY 2012 CACG award, but placed a hold on the drawdown of funds.

We note that, based on the most current data provided in the request for a waiver under the HEA, it does not appear that the State treated higher education equitably in SFY 2011. New Mexico provided data to the Department indicating that State support for public institutions of higher education increased by \$7,651,900 in SFY 2011 from the preceding five-year average (SFY 2006 – SFY 2010) – an increase of 0.98 percent. As indicated in New Mexico's waiver request, the State decreased financial support for student aid for students attending private institutions of higher education by \$883,070 in SFY 2011 compared to the preceding five-year average – a decrease of 66.71 percent.¹ The State's current data also show that total State revenues decreased by only 1.60 percent in SFY 2011 from the preceding five-year period and total State appropriations decreased by only 3.07 percent during the same period. Therefore, it appears that the State did not treat higher education equitably with other parts of the State budget in SFY 2011 and it is unlikely that, even after the State resolves its data issues, the Department will find it equitable to grant the State a waiver of the requirements in section 137 of the HEA. As such, the State should prepare for the likelihood that it will not receive its FFY 2012 award under the CACG program without making a significant effort to correct the violation in accordance with section 137(d) of the HEA – by making as much as \$47,435 in additional funding available for financial aid for students attending private institutions (the total amount of the State's shortfall in support in SFY 2011).²

Should the Department ultimately deny the State's request for a waiver of the requirements of section 137 of the HEA and the State wants to continue to pursue receiving CACG funds for FFY 2012, the State would need to submit, within two weeks of the date of the Department's notification of its denial of the waiver request, an assurance, signed by the Governor, of the State's intent to provide additional funding for higher education, commensurate with the Department's final calculations relating to the amount of significant effort required of the State under section 137(c) of the HEA. If the waiver request is denied and the State does not provide an assurance by the specified deadline, the Department would then de-obligate the State's FFY 2012 CACG award. The State could reapply for CACG funding in FFY 2013.

¹ We note that, according to the State, during the time period under consideration (SFY 2006 – SFY 2011), the College of Santa Fe closed and re-opened as a private, for-profit institution of higher education, at which time the institution was no longer eligible for financial aid from the State. We further note that State support for students attending the remaining non-profit institutions was reduced by \$32,755 from the preceding five-year average – a reduction of 9.94 percent. The Department recognizes that the closing of the College of Santa Fe represents circumstances beyond the State's control that contributed to the decline in State funding for financial aid for students attending private institutions of higher education. As such, the Department has taken those circumstances into account in its assessment of the State's maintenance of effort under section 137 of the HEA.

² Given current data from the State, even if the Department found that the State experienced a precipitous and unforeseen decline in financial resources, the Department would require the State to make a significant effort to correct the State's violation. At this point, it appears that the State would be required to restore at least \$32,000 in funding for financial aid for students attending private institutions.

We are making this information available now because we recognize that the final decision regarding the State's waiver request will have an impact on the services to students and we want to provide sufficient notice so that the State can make any necessary preparations for the current project year. We will continue to work with the State to resolve its data issues and will make a final decision on the State's waiver request when all outstanding data issues are resolved.

If you have questions regarding this letter or any information herein, you may contact Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Mr. Kevin Deiters
Executive Director
Education Trust Board of New Mexico
2048 Galisteo Street
Santa Fe, NM 87505

Dear Mr. Deiters:

This letter is in response to Secretary of Higher Education José Garcia's October 17, 2012 letter to the U.S. Department of Education (the Department), in response to the Department's letter of October 11, 2012, in which we provided an update on the status of the State of New Mexico'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 Secretary Garcia's letter, he indicated that New Mexico would provide an additional \$50,000 in funding for financial aid for students attending private institutions in order to correct the State's maintenance of effort violation in State fiscal year (SFY) 2011, in accordance with the Department's October 11, 2012 letter and section 137 of the HEA. Additional documentation submitted by the State via e-mail on October 29, 2012 shows that the State provided funds through the New Mexico Student Incentive Grant (NMSIG) program to the University of the Southwest and St. John's College, in the amounts of \$35,000 and \$15,000, respectively.

The Department has reviewed the State's response and will allow the State to count the additional funds disbursed through its NMSIG program as a significant effort from the State to correct its SFY 2011 maintenance of effort violation. As such, the Department will allow the State to receive its full Federal fiscal year 2012 College Access Challenge Grant (CACG) award.

As noted in our letter of October 11, due to the concurrent review of the State's requests for waivers of the maintenance of effort requirements of the HEA for SFY 2011 and the Individuals with Disabilities Education Act (IDEA) under 20 U.S.C. §1412(a)(18)(C)(i) for SFYs 2010 and 2011, the Department has not made a final determination with respect to the State's HEA waiver request. However, because the additional funds provided are in excess of the State's HEA shortfall in SFY 2011, our determination will not affect the State's receipt of its FFY 2012 CACG award. The Department's final determination will affect the amount of the additional funding that is required to be counted as SFY 2011 expenditures in future years when the State calculates its obligations under section 137 of the HEA. Once the Department has made a final determination with regard to the State's waiver request, we will notify the State regarding the specific amount of funding that must be counted in order to meet

the requirements of section 137(d).¹ If a waiver is not granted, the State will be required to count either the additional \$50,000 outlined in Secretary Garcia's letter or the amount outlined in the Department's final determination letter, whichever is less, as SFY 2011 expenditures in future years when calculating its obligations under section 137(a) of the HEA.

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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

¹ The State will only be required to restore funding and count such funds as SFY 2011 expenditures in the event that the Department denies the State's request for a waiver. If the Department grants the request, the State will not be required to count any of the additional funds made available as SFY 2011 expenditures for purposes of calculating the required level of effort in future years under section 137 of the HEA.

Mr. Kevin Deiters
Executive Director
Education Trust Board of New Mexico
2048 Galisteo Street
Santa Fe, NM 87505

Dear Mr. Deiters:

This letter is in response to Secretary of Higher Education José Garcia's October 17, 2012 letter to the U.S. Department of Education (the Department), in response to the Department's letter of October 11, 2012, in which we provided an update on the status of the State of New Mexico'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 Secretary Garcia's letter, he indicated that New Mexico would provide an additional \$50,000 in funding for financial aid for students attending private institutions in order to correct the State's maintenance of effort violation in State fiscal year (SFY) 2011, in accordance with the Department's October 11, 2012 letter and section 137 of the HEA. Additional documentation submitted by the State via e-mail on October 29, 2012 shows that the State provided funds through the New Mexico Student Incentive Grant (NMSIG) program to the University of the Southwest and St. John's College, in the amounts of \$35,000 and \$15,000, respectively.

The Department has reviewed the State's response and will allow the State to count the additional funds disbursed through its NMSIG program as a significant effort from the State to correct its SFY 2011 maintenance of effort violation. As such, the Department will allow the State to receive its full Federal fiscal year 2012 College Access Challenge Grant (CACG) award.

As noted in our letter of October 11, due to the concurrent review of the State's requests for waivers of the maintenance of effort requirements of the HEA for SFY 2011 and the Individuals with Disabilities Education Act (IDEA) under 20 U.S.C. §1412(a)(18)(C)(i) for SFYs 2010 and 2011, the Department has not made a final determination with respect to the State's HEA waiver request. However, because the additional funds provided are in excess of the State's HEA shortfall in SFY 2011, our determination will not affect the State's receipt of its FFY 2012 CACG award. The Department's final determination will affect the amount of the additional funding that is required to be counted as SFY 2011 expenditures in future years when the State calculates its obligations under section 137 of the HEA. Once the Department has made a final determination with regard to the State's waiver request, we will notify the State regarding the specific amount of funding that must be counted in order to meet

the requirements of section 137(d).¹ If a waiver is not granted, the State will be required to count either the additional \$50,000 outlined in Secretary Garcia's letter or the amount outlined in the Department's final determination letter, whichever is less, as SFY 2011 expenditures in future years when calculating its obligations under section 137(a) of the HEA.

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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

¹ The State will only be required to restore funding and count such funds as SFY 2011 expenditures in the event that the Department denies the State's request for a waiver. If the Department grants the request, the State will not be required to count any of the additional funds made available as SFY 2011 expenditures for purposes of calculating the required level of effort in future years under section 137 of the HEA.

Nevada

Dr. Magdalena Martinez
Assistant Vice Chancellor for Academic and Student Affairs
Nevada System of Higher Education
5550 West Flamingo Road
Las Vegas, NV 89103

Dear Dr. Martinez:

This letter is in response to Mr. Jeff Mohlenkamp's May 18, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on August 28, 2012 and via conference call on July 17, 2012) 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 your staff took to provide the initial and supplemental information. Based on our review of that information, the Department has determined that it would not be equitable to grant Nevada a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2011.

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.

Nevada provided data to the Department indicating that State support for public institutions of higher education decreased by \$45,698,826 in SFY 2011 from the preceding five-year average (SFY 2006 – SFY 2010) – a decrease of 7.71 percent. The State indicated that it does not make financial aid available to students attending private institutions of higher education in the State.

Data from the State indicate that Nevada's total State revenues increased by 0.89 percent in SFY 2011 from the preceding five-year period. Data submitted by the State also indicate that total State appropriations increased by 4.20 percent from the same five-year average.

In considering all of the information provided, we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2011 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, Nevada cannot receive an award for Federal fiscal year (FFY) 2012 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 2012 award in the CACG program.

Because we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2011 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 \$45,698,826 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 2011 – to meet the standard of “significant effort” set out in the HEA. If Nevada makes these additional funds available, these funds would be counted as SFY 2011 funds for purposes of calculating the State’s maintenance of effort obligations in future years under the HEA.

If the State submits an assurance, signed by the Governor, of its intent to provide this additional financial support, the Department will allow the State until September 1, 2013 to provide this additional funding. If the Department receives such an assurance by September 17, 2012, the Department will obligate the State’s FFY 2012 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 2012 CACG award and the State may reapply for CACG funding in FFY 2013.

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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

New York

Mr. George Kazanjian
Vice President, Grants and Scholarships
New York State Higher Education Services Corporation
99 Washington Avenue
Albany, NY 12255

Dear Mr. Kazanjian:

This letter is in response to Ms. Elsa Magee's May 31, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 20, July 6, July 12, July 18, and July 25, 2012 and via conference call on July 23, 2012) in which the State of New York 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. Based on our review of that information, the Department has determined that it would be equitable to grant New York a waiver of the requirements of section 137(a) of the HEA for State Fiscal Year (SFY) 2011.

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 provided data to the Department indicating that State support for public institutions of higher education increased by \$369,956,400 in SFY 2011 from the preceding five-year average (SFY 2006 – SFY 2010) – an increase of 7.79 percent. As indicated in New York's waiver request, the State reduced financial support for student aid for students attending private institutions of higher education by \$49,675,459 in SFY 2011 compared to the preceding five-year average – a reduction of 12.78 percent. However, the State also indicated that student financial aid awards are made based on student eligibility with no consideration given to whether a student chooses to attend a public or private institution of higher education. Therefore, the State has no discretion over whether the funds are used to attend a public or a private institution. Further, the State indicated that financial aid is administered through the New York State Tuition Assistance Program (TAP), a need-based entitlement program that

awards scholarships to all qualifying students, regardless of the amount of State appropriations. TAP expenditures are determined by student enrollment decisions, and additional funds are made available by the State in any fiscal year in which the original appropriation is not sufficient to meet actual TAP obligations. Data from the State indicate that New York neither changed eligibility requirements for TAP nor decreased maximum award sizes under the program during SFY 2011 or any preceding fiscal year in the relevant comparison period (SFY 2006 – SFY 2010).

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 number of students qualifying for the program and the enrollment distribution of those students. 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 2011. Accordingly, the Department will provide New York with its full Federal fiscal year 2012 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.

If you have questions regarding this letter or any information herein, you may contact Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Ohio

Mr. Carlos Bing
Assistant Director, Articulation & Transfer Operations
Ohio Board of Regents
30 East Broad Street, 36th Floor
Columbus, OH 43215

Dear Mr. Bing:

This letter is in response to your May 31, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 4, June 13, and July 24, 2012 and via conference call on July 16, 2012) in which the State of Ohio 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. Based on our review of that information, the Department has determined that it would not be equitable to grant Ohio a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2011.

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.

Ohio provided data to the Department indicating that State support for public institutions of higher education decreased by \$93,778,993 in SFY 2011 from the preceding five-year average (SFY 2006 – SFY 2010) – a decrease of 5.00 percent. As indicated in Ohio's waiver request, the State decreased financial support for student aid for students attending private institutions of higher education by \$37,600,121 in SFY 2011 compared to the preceding five-year average – a decrease of 48.91 percent.

Data provided to us by Ohio indicate that the State's total revenues decreased by 2.92 percent in SFY 2011 from the preceding five-year period. The data also indicate that Ohio's total State revenues exceeded total State appropriations by \$1,515,665,821 in SFY 2011, a substantial amount relative to the State's overall budget in that year. We recognize that the State had encumbrances on part of these excess revenues (including the tangible personal property tax replacements) and that State law required

the State to maintain an ending cash balance of \$138,816,370 in SFY 2011. However, even accounting for these obligations, Ohio's data submission shows an "available ending cash balance" of \$291,897,451 in SFY 2011. Accordingly, Ohio's data demonstrates 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 2011 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, Ohio cannot receive an award for Federal fiscal year (FFY) 2012 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 2012 award in the CACG program.

Because we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2011 that prevented it from maintaining its required level of support under section 137(a) of the HEA, the State must make an additional \$93,778,993 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and \$37,600,121 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 2011 – 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 2011 funds for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

If the State submits an assurance, signed by the Governor, of its intent to provide this additional financial support, the Department will allow the State until September 1, 2013 to provide this additional funding. If the Department receives such an assurance by September 1, 2012, the Department will obligate the State's FFY 2012 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 2012 CACG award and the State may reapply for CACG funding in FFY 2013.

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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Oregon

Ms. Stephanie Carnahan
Director of College Access Programs
Oregon University System
P.O. Box 3175
Eugene, OR 97403-0175

Dear Ms. Carnahan:

This letter addresses the State of Oregon's (Oregon's) receipt of funds under the College Access Challenge Grant (CACG) Program.

To receive a grant under the CACG Program, a State must meet 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 or be granted a waiver of those requirements. 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 CACG Program authorized by section 781 of the HEA, 20 U.S.C. §1141.

On May 11, 2012, Oregon submitted data to the Department demonstrating that the State did not meet the maintenance of effort requirements for State fiscal year (SFY) 2011. Oregon provided data indicating that State support for public institutions of higher education decreased by \$55,351,557 in SFY 2011 from the preceding five-year average (SFY 2006 – SFY 2010) – a decrease of 8.83 percent. The State reduced financial support for private institutions of higher education by \$2,334,038 in SFY 2011 compared to the preceding five-year average – a reduction of 48.89 percent.

The data we received demonstrate that Oregon failed to provide support for higher education that is equal to or greater than the average amount provided over the prior five fiscal years for both public institutions of higher education (excluding capital expenses and research and development costs) and private institutions of higher education (as measured by financial aid/scholarships for students attending private colleges).

In your e-mail of May 30, 2012 you notified the Department that Oregon would not be requesting a waiver of these requirements under §137(c) of the HEA. Therefore, Oregon will not receive an award under the CACG Program for Federal fiscal year 2012.

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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Pennsylvania

Ms. Jennifer Dugan
Executive Assistant to the Deputy Secretary
Postsecondary and Higher Education
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126

Dear Ms. Dugan:

This letter is in response to your May 31, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 5, July 11, July 12, and July 20, 2012 and via conference call on July 11, 2012) in which the State of Pennsylvania 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. Based on our review of that information, the Department has decided that it would not be equitable to grant Pennsylvania a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2011.

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.

Pennsylvania provided data to the Department indicating that State support for public institutions of higher education decreased by \$12,376,123 in SFY 2011 from the preceding five-year average (SFY 2006 – SFY 2010) – a decrease of 0.86 percent. As indicated in Pennsylvania’s waiver request, the State reduced financial support for student aid for students attending private institutions of higher education by \$14,271,312 in SFY 2011 compared to the preceding five-year average – a reduction of 9.96 percent. However, the State also indicated that student financial aid awards are made based on student eligibility with no consideration given to whether a student chooses to attend a public or private institution of higher education. Therefore, although Pennsylvania controls the overall appropriation for student financial aid, it has no discretion over whether the funds are used to attend a

public or a private institution. Data from the State indicate that the overall appropriation for student financial aid decreased by \$2,014,800 in SFY 2011 from the preceding five-year average – a decrease of 0.52 percent.

Pennsylvania's total State revenues increased by 0.91 percent in SFY 2011 from the preceding five-year period. Data submitted by the State also indicate that total State revenues exceeded total State appropriations by \$1,004,374,000 in SFY 2011, a substantial amount relative to the State's overall budget and well beyond the amount necessary to maintain the State's required level of financial support for higher education in SFY 2011. While we recognize that the total State appropriations decreased by 4.58 percent, Pennsylvania'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 2011 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, Pennsylvania cannot receive an award for Federal fiscal year (FFY) 2012 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 2012 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant efforts" set out in the HEA, Pennsylvania must make an additional \$12,376,123 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and \$739,776 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 2011.¹ If Pennsylvania makes these additional funds available, these funds would be counted as SFY 2011 funds for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

If the State submits an assurance, signed by the Governor, of its intent to provide this additional financial support, the Department will allow the State until September 1, 2013 to provide this additional funding. If the Department receives such an assurance by September 1, 2012, the Department will obligate the State's FFY 2012 CACG award but place a hold on drawdown of the

¹ The Department determined the restoration amount for financial aid for students attending private institutions by adjusting the total shortfall amount (\$14,271,312) 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 .52 percent reduction in total student aid. Because the State controls the overall appropriation for student financial aid but has no discretion over whether the funds are used to attend a public or a private institution, the Department would consider an increase in the total State appropriation for student financial aid as restoration of financial aid for students attending private institutions.

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 2012 CACG award and the State may reapply for CACG funding in FFY 2013.

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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Puerto Rico

Dr. Ana Quintero
University of Puerto Rico System, Central Administration
Jardín Botánico Sur
1187 Calle Flamboyán
San Juan, PR 00926-1117

Dear Dr. Quintero:

This letter is in response to Dr. Miguel Muñoz's May 31, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 1, June 8, and July 10, 2012) in which the Commonwealth of Puerto Rico 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. Based on our review of that information, the Department has determined that it would be equitable to grant Puerto Rico a waiver of the requirements of section 137(a) of the HEA for State Fiscal Year (SFY) 2011.

Under section 137(a) of the HEA, the Commonwealth 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 or similar entities 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 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 fiscal support for higher education.

Puerto Rico provided data indicating that total Commonwealth revenues decreased by 5.50 percent in SFY 2011 from the preceding five-year average (SFY 2006-SFY 2010). As indicated in the request, the Commonwealth reduced financial support for public institutions of higher education by \$48,191,820 in SFY 2011 compared to the preceding five-year average – a reduction of 5.91 percent. Additionally, in FY 2011, the Commonwealth maintained support for financial aid for students attending private institutions at the same level as the preceding five years. The reductions in support for public institutions of higher education (5.91 percent) were smaller than the percentage reductions in overall State appropriations (7.26 percent) from the preceding five-year average.

In considering all of the information provided by the Commonwealth, we believe that Puerto Rico faced a difficult financial situation in SFY 2011. While it is regrettable that Puerto Rico cut support for public institutions of higher education, we recognize that these reductions in support were relatively small compared to the reduction in total State appropriations. 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 Commonwealth. Accordingly, the Department will provide Puerto Rico with its full Federal fiscal year 2012 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, Puerto Rico 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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Rhode Island

Ms. Deborah Grossman-Garber
Associate Commissioner for Planning and Policy
Rhode Island Office of Higher Education
80 Washington Street, Suite 524
Providence, RI 02903

Dear Ms. Grossman-Garber:

This letter is in response to Mr. Thomas Mullaney's May 29, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 7, July 27, July 30, and August 28, 2012 and via conference calls on July 23 and August 9, 2012) 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 your staff took to provide the initial and supplemental information. Based on our review of that information, the Department has determined that it would not be equitable to grant Rhode Island a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2011.

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.

Rhode Island provided data to the Department indicating that State support for public institutions of higher education decreased by \$16,552,236 in SFY 2011 from the preceding five-year average (SFY 2006 – SFY 2010) – a decrease of 9.15 percent.¹ As indicated in Rhode Island's waiver request, the State reduced financial support for student aid for students attending private institutions of higher education by \$848,101 in SFY 2011 compared to the preceding five-year average – a reduction of

¹ In an e-mail communication on July 30, 2012 and in a conference call with the State on August 9, 2012, the State confirmed that an SFY 2011 supplemental appropriation made as "significant efforts" to correct the State's maintenance of effort violation in SFY 2009 was included in the State's calculation of support for public institutions. The Department has subsequently deducted these funds from the State's SFY 2011 calculation of State support for public institutions in order to avoid counting these funds in two separate years (SFYs 2009 and 2011).

21.83 percent.² However, the State also indicated that student financial aid awards are made based on student eligibility with no consideration given to whether a student chooses to attend a public or private institution of higher education. Therefore, although Rhode Island controls the overall appropriation for student financial aid, it has no discretion over whether the funds are used to attend a public or a private institution. Data from the State indicate that the overall appropriation for student financial aid decreased by \$395,863 in SFY 2011 from the preceding five-year average – a decrease of 3.65 percent.³

Rhode Island's total State revenues decreased by 2.53 percent in SFY 2011 from the preceding five-year period. Data submitted by the State also indicate that total State revenues exceeded total State appropriations by \$50,711,111 in SFY 2011, a substantial amount relative to the State's overall budget and well beyond the amount necessary to maintain the State's required level of financial support for higher education in SFY 2011. While we recognize that the total State appropriations decreased by 4.55 percent, Rhode Island'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. Furthermore, we note that the reduction in support for public institutions of higher education (8.82 percent) was greater than the percentage declines in overall State appropriations (4.55 percent) and overall State revenue (2.53 percent) from the preceding five-year average.

In considering all of the information provided, we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2011 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 the State 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, Rhode Island cannot receive an award for Federal fiscal year (FFY) 2012 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 2012 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant efforts" set out in the HEA, Rhode Island must make an additional \$16,552,236 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and \$141,908 in support for financial aid for students attending private institutions of higher education – the amounts

² As noted in prior communications with the State relating to its failure to maintain effort in SFYs 2009 and 2010, the Department added the funds Rhode Island made available as "significant efforts" to correct its prior year HEA maintenance of effort violations to the "Private financial aid" totals in the appropriate State fiscal years--\$580,000 for SFY 2009 and \$345,422 for SFY 2010.

³ The Department added the funds Rhode Island made available as "significant efforts" to correct prior year HEA maintenance of effort violations to the "Total financial aid" totals in the appropriate State fiscal years--\$580,000 for SFY 2009 and \$345,422 for SFY 2010.

needed to fully restore State reductions in support for higher education in SFY 2011.⁴ If Rhode Island makes these additional funds available, these funds would be counted as SFY 2011 funds for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

If the State submits an assurance, signed by the Governor, of its intent to provide this additional financial support, the Department will allow the State until September 1, 2013 to provide this additional funding. If the Department receives such an assurance by September 20, 2012, the Department will obligate the State's FFY 2012 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 2012 CACG award and the State may reapply for CACG funding in FFY 2013.

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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

⁴ The Department determined the restoration amount for support for financial aid for students attending private institutions of higher education by adjusting the total shortfall amount (\$848,101) to account for the State's inability to control the distribution of financial aid, thus removing the portion of reduced support beyond the 3.65 percent reduction in total financial aid.

South Carolina

Dr. Karen Woodfaulk
Director of Student Services
South Carolina Commission on Higher Education
1122 Lady Street, Suite 300
Columbia, SC 29201

Dear Dr. Woodfaulk:

This letter is in response to Ms. Julie Carullo's May 29, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 28 and July 17, 2012 and via conference call on July 16, 2012) in which the State of South Carolina 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. Based on our review of that information, the Department has determined that it would not be equitable to grant South Carolina a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2011.

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.

South Carolina provided data to the Department indicating that State support for public institutions of higher education decreased by \$244,642,686 in SFY 2011 from the preceding five-year average (SFY 2006 – SFY 2010) – a decrease of 26.58 percent. As indicated in South Carolina's waiver request, the State increased financial support for student aid for students attending private institutions of higher education by \$6,058,308 in SFY 2011 compared to the preceding five-year average – an increase of 8.40 percent.

Data from the State indicate that South Carolina's total State revenues decreased by 6.18 percent in SFY 2011 from the preceding five-year period. Data submitted by the State also indicate that total State revenues exceeded total State appropriations by \$560,506,265 in SFY 2011, a substantial amount

relative to the State's overall budget in SFY 2011. While the State provided data indicating that a portion of the funds were necessary to offset an operating deficit in the State's Department of Health and Human Services, we also note that the State's submissions indicate \$296,540,075 was available for distribution – an amount representing more than 5 percent of total State revenues in that year. While we recognize that the total State appropriations decreased by 12.01 percent from the prior five-year average, South Carolina'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 2011 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, South Carolina cannot receive an award for Federal fiscal year (FFY) 2012 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 2012 award in the CACG program.

Because we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2011 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 \$244,642,686 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 2011 – to meet the standard of "significant effort" set out in the HEA. If South Carolina makes these additional funds available, these funds would be counted as SFY 2011 funds for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

If the State submits an assurance, signed by the Governor, of its intent to provide this additional financial support, the Department will allow the State until September 1, 2013 to provide this additional funding. If the Department receives such an assurance by September 1, 2012, the Department will obligate the State's FFY 2012 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 2012 CACG award and the State may reapply for CACG funding in FFY 2013.

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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Ms. Julie Carullo
Acting Executive Director
South Carolina Commission on Higher Education
1122 Lady Street, Suite 300
Columbia, SC 29201

Dear Ms. Carullo:

This letter is in response to your September 4, 2012 letter to the U.S. Department of Education (the Department) in which you requested that the Department reconsider its decision to deny the State of South Carolina's request for a waiver of the maintenance of effort requirements in section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f, for State fiscal year (SFY) 2011.

We have reviewed your letter, including your arguments related to the use of total State revenues instead of total State appropriations in our determination, the State's excess revenues in SFY 2011, and the inclusion of State Fiscal Stabilization Funds (SFSF) in the State's calculation of support for public institutions of higher education in prior years. However, we have determined that your letter did not provide any new information that would change our initial determination to deny the State's waiver request. Our original determination, as outlined in our August 13, 2012 letter to Dr. Karen Woodfaulk, stands.

Your letter requests that the Department consider "Final Adjusted Total State Appropriations" as total State revenues in lieu of year-end total State revenues, noting that such an approach "would be consistent with the definition previously established for total revenues for the MOE requirement for the State Fiscal Stabilization Fund Program." While we recognize that actual year-end revenues may differ from the initial estimates upon which initial appropriations decisions were made, our analysis cannot look solely at the dollars appropriated by the State and ignore the actual financial resources available to a State in a given year. Focusing only on the funds appropriated by a State would not give us a complete picture of the financial capacity of the State to meet the maintenance of effort requirements. Further, while the Department strives for consistency in our methodology for evaluating waivers across programs, program-specific considerations have sometimes called for different approaches. The State Fiscal Stabilization Fund program was established as part of the American Recovery and Reinvestment Act of 2009 (ARRA) as a time-limited program to address a specific objective and the definitions that have been used for that program are consistent with its objective. In evaluating States' compliance with section 137 of the HEA, the Department has consistently

considered State revenues in assessing the State's financial capacity to meet the requirements therein. Our evaluation of South Carolina's compliance with the maintenance of effort requirements is consistent with the approach we have used with other States.

Your letter also addresses the State's excess revenues in SFY 2011 by noting that such funds were present but not available for appropriation. As noted in the Department's June 17, 2011 letter addressing the State's requests for a waiver for SFYs 2009, 2010, and 2011 of the maintenance of effort requirements in the Individuals with Disabilities Education Act (IDEA) under 20 U.S.C. §1412(a)(18)(C)(i), "when weighing the equities of a waiver request for a fiscal year, particularly when the State had a surplus in that year, the Department does not take a rigid formulaic approach." Instead, we consider whether, given all the circumstances facing the State in a given year, the State had the resources to maintain financial support. In SFY 2011, we considered the fact that revenue projections increased over the course of the fiscal year. We also considered the State's argument, made both in conjunction with this waiver request and in the State's prior request for a waiver of the maintenance of effort requirements under the IDEA for SFY 2011, that the surplus was realized "outside of the budget cycle." As noted in our letter denying the State's request for a waiver under the IDEA for SFY 2011, "while the Department is cognizant of the State's usual budget process, a shortfall in a State's required fiscal effort... may not be treated as an ordinary circumstance." Even given the circumstances described in your letter, the State has an obligation under the HEA to maintain financial support for higher education and did not meet that obligation in SFY 2011, despite having sufficient financial resources to do so.

Your letter questions the Department's calculation of the "significant efforts" required to meet the standards of section 137(d) of the HEA and the use of funds made available under the SFSF program in prior years. When the Department determines that it is not equitable to grant a waiver because a State did not face an exceptional or uncontrollable circumstance, the Department requires the State to restore all funding reductions to higher education to receive a grant under the College Access Challenge Grant (CACG) Program. Since the Department determined that the State had the financial resources available to meet the requirements of section 137 of the HEA and did not do so, the Department is requiring the State to restore the full \$244,642,686 shortfall in support for public institutions of higher education to receive its Federal fiscal year (FFY) 2012 award under the CACG Program. The Department has required the same of every State failing to demonstrate that it experienced an exceptional or uncontrollable circumstance.

Your letter further argues that "if the application of stimulus funds required in the past two years to meet significant effort in light of our prior waiver requests had been considered using the proportionality calculation that has been defined this year, the amount of stimulus funds required would have been far less than those used." We recognize that the application of SFSF funds in SFY 2009 and SFY 2010 had an impact on the State's preceding five-year average in determining the required level of effort for SFY 2011. However, we believe we appropriately responded to the State's requests regarding the treatment of SFSF funds in determining its compliance with the MOE requirements in the HEA. For SFY 2009, the Department used the "proportionality calculation" to

arrive at the State's required restoration of \$54,558,605, as explained in the Department's letter of November 19, 2010, and the State, accordingly, proposed to use SFSF funds in that amount to meet the required significant efforts. While the State initially requested a waiver of the requirements of section 137 of the HEA for SFY 2010, before the Department had the opportunity to act on that request, the State submitted revised information on July 26, 2011, indicating that it wished to count \$121,694,766 in SFSF funds toward its calculation of State support for public institutions of higher education. Therefore, as outlined in the Department's letter of September 2, 2011, the Department found that the State met the requirements of section 137 and did not need a waiver. As the State's receipt of its CACG awards in FFY 2010 and FFY 2011 was based on the State's restoration of \$54,558,605 in SFY 2009 and the State's meeting the maintenance of effort requirements in SFY 2010 using \$121,694,766 of SFSF funds, it would be inappropriate to now allow the State to exclude these funds in calculating its prior five-year average.

Finally, you indicate that the application of these SFSF funds "compounds [your] challenge in meeting the MOE" and that the State would have potentially questioned "the amount of stimulus funding required and ultimately accepted in 2010 and 2011 in meeting significant effort." As noted in the Department's letters of November 19, 2010 and September 2, 2011, if a State uses SFSF funds to meet maintenance of effort requirements relating to support for public institutions of higher education, the State is required to count those funds in the appropriate year when calculating required levels of effort in future years. The Department has made consistent efforts to ensure States are aware of both the option to count SFSF funds as State support for higher education and the long-term impacts of doing so. The fact that counting such funds in prior years now results in a shortfall that is larger than it otherwise would have been cannot be a reason to adjust the State's required level of significant effort in the current year. Further, it was the State, not the Department, that determined the amount of SFSF funds to be counted by the State in SFY 2010 to meet the maintenance of effort requirements and, thereby, enable the State to receive its FFY 2011 award.¹

As noted above, having reviewed your letter, we do not find any basis to change our initial decision to deny the State a waiver of the requirements of section 137 of the HEA. Based on your September 24, 2012 e-mail stating that South Carolina does not intend to submit an assurance, signed by the Governor, of its intent to provide additional financial support as described in the Department's August 13, 2012 letter, the Department has not obligated the State's FFY 2012 CACG award and the funds have lapsed.

¹ We further note that, had the State continued to seek a waiver of the maintenance of effort requirements for SFY 2010 and had the Department granted the waiver and used a proportionality calculation, the State would nevertheless have had to restore funds to qualify for a CACG award. We believe that if SFSF funds were used to make the needed restoration for SFY 2010, the State would still have a shortfall in SFY 2011 in excess of \$225 million.

If you have any questions regarding this letter or any information herein, you may contact Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Enclosures (2)

Virginia

Ms. Paula Fisher
College Access Challenge Grant Director
State Council of Higher Education for Virginia
101 N. 14th Street, 10th Floor
Richmond, VA 23219

Dear Ms. Fisher:

This letter is in response to the State of Virginia's request for 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. Virginia submitted its waiver request in its College Access Challenge Grant (CACG) Program Annual Performance Report for 2011-2012 submitted to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 4 and June 27, 2012 and via conference calls on June 4 and July 18, 2012).

We appreciate the time your staff took to provide the initial and supplemental information. Based on our review of that information, the Department has determined that it would not be equitable to grant Virginia a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2011.

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 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.

Virginia provided data to the Department indicating that State support for public institutions of higher education increased by \$64,121,713 in SFY 2011 from the preceding five-year average (SFY 2006 – SFY 2010) – an increase of 3.92 percent. As indicated in Virginia's waiver request, the State decreased financial support for student aid for students attending private institutions of higher education by \$1,160,780 in SFY 2011 compared to the preceding five-year average – a decrease of 2.13 percent.

Virginia's total State revenues decreased by 1.97 percent in SFY 2011 from the preceding five-year period. Data submitted by the State also indicate that total State revenues exceeded total State

appropriations by \$266,461,647 in SFY 2011, a substantial amount relative to the State's overall budget and well beyond the amount necessary to maintain the State's required level of financial support for higher education in SFY 2011. While we recognize that the total State appropriations decreased by 0.49 percent, Virginia'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 2011 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) 2012 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 2012 award in the CACG program.

Because we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2011 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 \$1,160,780 available in support for financial aid for students attending private institutions of higher education – the amount needed to fully restore State reductions in support for higher education in SFY 2011 – to meet the standard of "significant effort" set out in the HEA. If Virginia makes these additional funds available, these funds would be counted as SFY 2011 funds for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

If the State submits an assurance, signed by the Governor, of its intent to provide this additional financial support, the Department will allow the State until September 1, 2013 to provide this additional funding. If the Department receives such an assurance by September 1, 2012, the Department will obligate the State's FFY 2012 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 2012 CACG award and the State may reapply for CACG funding in FFY 2013.

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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Ms. Paula Fisher
College Access Challenge Grant Director
State Council of Higher Education for Virginia
101 N. 14th Street, 10th Floor
Richmond, VA 23219

Dear Ms. Fisher:

This letter is in response to Governor Robert McDonnell's August 28, 2012 letter to the U.S. Department of Education (the Department), in response to the Department's letter of August 13, 2012, in which the Department denied the State of Virginia'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 Governor McDonnell's letter, he indicated that Virginia wishes to count \$1,160,780 of the funding made available under the Tuition Assistance Grant (TAG) program as a "significant effort" to correct the State's maintenance of effort violation in State fiscal year (SFY) 2011, in accordance with the Department's August 13, 2012 letter and section 137 of the HEA. As described in the letter, the TAG program provides support for financial aid for students attending private institutions.

The Department has reviewed your request and will allow the State to count \$1,160,780 of the funds made available under the TAG program in SFY 2013 as a "significant effort" from the State to correct its SFY 2011 maintenance of effort violation. The Department is allowing the State to count these funds as a "significant effort" because, according to data from the State, Virginia's SFY 2013 TAG appropriation (\$61,812,665) exceeds the level required by section 137 of the HEA by a sufficient sum such that counting these funds as SFY 2011 expenditures would not appear to affect the State's ability to meet the requirements of section 137 of the HEA in SFY 2013.¹ 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 2012 award in the College Access Challenge Grant (CACG) program. The Department considers this issue resolved.

As outlined in the Department's August 13, 2012 letter, the State will be required to count these additional funds as SFY 2011 expenditures in future years when calculating its obligations under section 137(a) of the HEA.

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.

¹ After subtracting \$1,160,780 from the SFY 2013 TAG appropriation and adding it to the SFY 2011 figure, the State's SFY 2013 support for private institutions of higher education exceeds the amount required by section 137 of the HEA by \$2,864,476. The Department also notes that the State may not count any of the additional funds appropriated under the TAG program in SFY 2012 as a "significant effort" because the amount appropriated in that fiscal year does not meet the requirements of section 137(a) of the HEA.

If you have questions regarding this letter or any information herein, you may contact Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

Washington

Mr. Weiya Liang
Washington Higher Education Coordinating Board
917 Lakeridge Way SW
P.O. Box 43430
Olympia, WA 98504-3430

Dear Mr. Liang:

This letter is in response to Mr. Don Bennett's May 31, 2012 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on May 31, June 5, June 7, June 12, June 28, July 31, and August 8, 2012 and via conference call on June 20, 2012) 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 your staff took to provide the initial and supplemental information. Based on our review of that information, the Department has determined that it would not be equitable to grant Washington a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2011.

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.

Washington provided data to the Department indicating that State support for public institutions of higher education decreased by \$91,195,383 in SFY 2011 from the preceding five-year average (SFY 2006 – SFY 2010) – a decrease of 5.61 percent. As indicated in Washington's waiver request, the State increased financial support for student aid for students attending private institutions of higher education by \$1,158,711 in SFY 2011 compared to the preceding five-year average – an increase of 3.12 percent.

Data from the State indicate that Washington's total State resources increased by 1.31 percent in SFY 2011 from the preceding five-year period. We recognize that Washington's total State appropriations decreased by 3.21 percent. However, we have no basis for a determination that the State experienced a

precipitous and unforeseen decline in financial resources in SFY 2011, since the State's Near General Fund had \$193,466,800 more than it did, on average, during the preceding five year period, even after accounting for the State's starting deficit in SFY 2011. Additionally, we note that the reduction in support for public institutions of higher education (5.61 percent) was greater than the percentage decline in overall State appropriations (3.21 percent) from the preceding five-year average.

In considering all of the information provided, we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2011 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 Washington 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) 2012 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 2012 award in the CACG program.

Because we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2011 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 \$91,195,383 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 2011 – to meet the standard of "significant effort" set out in the HEA. If Washington makes these additional funds available, these funds would be counted as SFY 2011 funds for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

If the State submits an assurance, signed by the Governor, of its intent to provide this additional financial support, the Department will allow the State until September 1, 2013 to provide this additional funding. If the Department receives such an assurance by September 4, 2012, the Department will obligate the State's FFY 2012 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 2012 CACG award and the State may reapply for CACG funding in FFY 2013.

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 Dr. Debra Saunders-White, Deputy Assistant Secretary for Higher Education Programs, at 202-219-7027 or debra.saunders-white@ed.gov.

Sincerely,

David A. Bergeron
Acting Assistant Secretary
for Postsecondary Education

[revised Jan 2013]