



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

NOV 19 2010

THE ASSISTANT SECRETARY

Mr. Derrah Cassidy
South Carolina Commission on Higher Education
1333 Main Street, Suite 200
Columbia, SC 29201

Dear Mr. Cassidy:

This letter is in response to your request to the U.S. Department of Education (Department) for a waiver of the maintenance of effort (MOE) requirement under section 137 of the Higher Education Act of 1965, as amended (HEA). Under that section, states are required to maintain spending for higher education at least at the average amount spent over the past 5 years for (a) public institutions (excluding capital expenses and research and development costs) and (b) private institutions (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.

Based on the data that South Carolina submitted in its waiver request of July 26, 2010, the Department determined that the state qualified for a partial waiver of the MOE requirement under the HEA because the state experienced a decline in financial resources that ultimately caused a reduction in total expenditures in fiscal year (FY) 2009. This waiver allows South Carolina to receive CACG Program funds for Federal FY 2010 if the state restores funding for higher education to a level that is proportional to the overall reduction in state government expenditures. To meet this requirement South Carolina must restore the amount of \$54,558,605 to public institutions of higher education.

As previously discussed, South Carolina may use State Fiscal Stabilization Funds (SFSF funds) provided under the American Recovery and Reinvestment Act of 2009, to restore assistance to public institutions of higher education, as long as those funds will not be used for capital expenses or research and development. Under section 137 of the HEA, States cannot count capital expenses or research and development costs toward their support for public institutions.

In your letter dated October 20, 2010, South Carolina presented a breakdown of the SFSF funds that have been allocated in FY 2009-2010 to public institutions for higher education and stated that this allocation excludes research and development and capital expenses. Please send Karmon Simms-Coates, the CACG Program Manager, an e-mail at karmon.simms-coates@ed.gov by November 26, 2010 specifying that the state is planning to use \$54,558,605 of the \$69,966,007 in SFSF funds that have been allocated in FY 2009-2010 to restore funding shortages in FY 2009. Upon receipt of this e-mail, the Department will allow the state to draw down its FY 2010 funds under the CACG program. South Carolina must: (a) retain records showing that the SFSF funds were not used for capital expenses or research and development costs; (b) may not count the same SFSF funds used to restore funding in FY 2010 to meet its

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MOE requirement in FY 2010, and (c) must include SFSF funds used to restore the shortfall in FY 2009 in calculating the state's MOE for FY 2010.

Please note that South Carolina must retain all records relating to the MOE requirement and the CACG grants as required by 34 C.F.R. §80.42. The Department retains the right to conduct an audit or otherwise review these records in the future.

If you have any questions, please contact Karmon Simms-Coates at karmon.simms-coates@ed.gov or 202-502-7807.

Sincerely,

/s/

Eduardo M. Ochoa