

College Access Challenge Grant Program

Maintenance of Effort

Waiver Determination Letters for 2013

U.S. Department of Education
Washington, DC 20006

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Alabama

Dr. Philip Cleveland
Alabama State Department of Education
P.O. Box 302101
Montgomery, AL 36130-2101

Dear Dr. Cleveland:

This letter is in response to Dr. Thomas Bice's May 14, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on July 10, 2013 and via conference call on July 24, 2013) 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 initial and supplemental information. Based on our review of that information, the Department has determined that it would not be equitable to grant Alabama a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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 to the Department indicating that State support for public institutions of higher education decreased by \$158,559,882 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 10.65 percent. As indicated in Alabama's waiver request, the State reduced financial support for student aid for students attending private institutions of higher education by \$1,283,799 in SFY 2012 compared to the preceding five-year average – a reduction of 34.03 percent.

Alabama's total State revenues decreased by 2.97 percent in SFY 2012 from the preceding five-year period. While we recognize that the total State appropriations decreased by 1.90 percent, we

considered the fact that the reductions in support for public institutions of higher education (10.65 percent) and financial aid for students attending private institutions of higher education (34.03 percent) were greater than the percentage declines in overall State appropriations (1.90 percent) and overall State revenue (2.97 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 2012 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, Alabama cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of “significant efforts” set out in the HEA, Alabama must make an additional \$130,925,832 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and \$1,212,292 in support for financial aid for students attending private institutions of higher education – the amounts needed to bring reductions in State support for public institutions of higher education and financial aid for students attending private institutions to the level of reductions to total State appropriations. If Alabama makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 13, 2013, the Department will obligate the State’s FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Arizona

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

Dear Ms. Gau:

This letter is in response to your May 10, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 3, June 6, June 13, June 17, August 9, August 15, August 16, and August 27, 2013 and via conference call on June 24 and July 24, 2013) in which the State of Arizona requested a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f.

We appreciate the time your staff took to provide the initial and supplemental information. Based on our review of that information, the Department has determined that it would not be equitable to grant Arizona a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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 \$305,681,580 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 29.76 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 \$2,830,640 in SFY 2012 compared to the preceding five-year average – a reduction of 100.00 percent.

Arizona's total State revenues decreased by 6.04 percent in SFY 2012 from the preceding five-year period. While we recognize that the total State appropriations decreased by 14.09 percent, we

considered the fact that the reductions in support for public institutions of higher education (29.76 percent) and financial aid for students attending private institutions of higher education (100.00 percent) were greater than the percentage declines in overall State appropriations (14.09 percent) and overall State revenue (6.04 percent) from the preceding five-year average.¹

In considering all of the information provided, we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2012 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, Arizona cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of “significant efforts” set out in the HEA, Arizona must make an additional \$160,992,159 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and \$2,431,848 in support for financial aid for students attending private institutions of higher education – the amounts needed to bring reductions in State support for public institutions of higher education and financial aid for students attending private institutions to the level of reductions to total State appropriations. If Arizona makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 23, 2013, the Department will obligate the State’s FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

¹ The State initially provided data indicating that overall revenues increased 2.54% from the preceding five-year average while overall State appropriations decreased 5.54 percent from the preceding five-year average. The State subsequently clarified that these data included revenues and appropriations made available through a temporary penny sales tax and that these funds were not available for appropriation to higher education. The Department analyzed the State’s waiver request using the figures excluding penny sales tax revenues and appropriations.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

California

Ms. Janet McDuffie
Chief, Administration and External Affairs
California Student Aid Commission
11040 White Rock Road, Suite 100
Rancho Cordova, CA 95670

Dear Ms. McDuffie:

This letter is in response to Ms. Karen Stapf Walters's May 15, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 7, June 21, and July 18, 2013 and via conference call on June 14 and July 16, 2013) in which the State of California 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 California a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012. However, because the State has already met the standard of "significant effort" set out in section 137(d) of the HEA, the Department will allow the State to receive its full Federal fiscal year (FFY) 2013 award in the College Access Challenge Grant (CACG) Program.

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.

California provided data to the Department indicating that State support for public institutions of higher education decreased by \$1,300,069,234 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 13.22 percent. As indicated in California's waiver request, the State increased financial support for student aid for students attending private institutions of higher

education by \$58,081,881 in SFY 2012 compared to the preceding five-year average – an increase of 21.78 percent.

California's total State revenues decreased by 5.62 percent in SFY 2012 from the preceding five-year period. While we recognize that the total State appropriations decreased by 11.65 percent, we considered the fact that the reductions in support for public institutions of higher education (13.22 percent) were greater than the percentage declines in overall State appropriations (11.65 percent) and overall State revenue (5.62 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 2012 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." The Department has determined that, in order to meet the standard of "significant effort" set out in the HEA, California must make an additional \$154,832,026 available in support for public institutions of higher education – the amount needed to bring reductions in State support for public institutions of higher education to the level of reductions to total State appropriations.

In your July 18 e-mail, you indicated that California has appropriated \$9,468,470,000 for public institutions of higher education in SFY 2014. The Department will allow the State to count \$154,832,026 of these funds as a "significant effort" from the State to correct its SFY 2012 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, California's SFY 2014 total appropriation for public institutions of higher education exceeds the level required by section 137 of the HEA by a sufficient sum such that counting these funds as SFY 2012 expenditures would not appear to affect the State's ability to meet the requirements of section 137 of the HEA in SFY 2014. The State will be required to count these additional funds as SFY 2012 expenditures in future years when calculating its obligations under section 137(a) of the HEA.

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 FFY 2013 award in the CACG program. The Department considers this issue resolved.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Colorado

Ms. Dawn Taylor Owens
Colorado Department of Higher Education
1560 Broadway, Suite 1600
Denver, CO 80202

Dear Ms. Taylor Owens:

This letter addresses the State of Colorado'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 23, 2013, Colorado submitted data to the Department demonstrating that the State did not meet the maintenance of effort requirements for State fiscal year (SFY) 2012. The data we received demonstrate that Colorado 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).

Colorado did not meet the maintenance of effort requirements for SFY 2012, nor did the State request a waiver of these requirements under §137(c) of the HEA. Therefore, Colorado will not receive an award under the CACG Program for Federal fiscal year 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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Connecticut

Dr. Aynsley Diamond
Connecticut State Colleges & Universities
Board of Regents for Higher Education
39 Woodland Street
Hartford, CT 06105

Dear Dr. Diamond:

This letter is in response to your letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via conference call on July 22, 2013) in which the State of Connecticut 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 Connecticut a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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.

Connecticut provided data to the Department indicating that State support for public institutions of higher education increased by \$9,170,629 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – an increase of 1.37 percent. As indicated in Connecticut's waiver request, the State reduced financial support for student aid for students attending private institutions of higher

education by \$4,018,789 in SFY 2012 compared to the preceding five-year average – a reduction of 18.19 percent.

Connecticut's total State revenues increased by 10.87 percent in SFY 2012 from the preceding five-year period. Data submitted by the State also indicate that total State appropriations increased by 12.33 percent from the same 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 2012.

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, Connecticut cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

To meet the standard of "significant effort" set out in the HEA and receive its CACG award for FFY 2013, the State must make an additional \$4,018,789 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 2012. If Connecticut makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 1, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Delaware

Ms. Karen Field Rogers
Delaware Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

Dear Ms. Field Rogers:

This letter is in response to your May 10, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via conference call on July 17, 2013) in which the State of Delaware requests a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f.

We appreciate the time 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 Delaware a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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 State support for public institutions of higher education decreased by \$11,566,801 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 5.04 percent. As indicated in Delaware’s waiver request, the State reduced financial support for student aid for students attending private institutions of higher education by \$42,397 in SFY 2012 compared to the preceding five-year average – a reduction of 12.72 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 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 \$2,406,800 in SFY 2012 from the preceding five-year average – an increase of 39.42 percent.

Delaware's total State revenues increased by 1.42 percent in SFY 2012 from the preceding five-year period. Even though the State's revenues increased from the prior five-year average, Delaware provided 5.04 percent less for public institutions of higher education in SFY 2012, compared to the prior five year average. Delaware'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 2012 that prevented it from meeting its obligations under section 137(a) of the HEA. Accordingly, we have determined that it would not be equitable to grant a waiver under section 137(c) of the HEA.

When a State fails to maintain State financial support at the level required by law, section 137(d) of the HEA directs that the "Secretary shall withhold...any amount that would otherwise be available to the State...until such State has made significant efforts to correct the violation." At this time, Delaware cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant effort" set out in the HEA, Delaware must make an additional \$11,566,801 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 public institutions of higher education in SFY 2012.¹ If Delaware makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 1, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

¹ The Department is not requiring the State to make additional funds available for financial aid for students attending private institutions of higher education as part of its demonstration of "significant effort" because the State has provided data indicating that the overall appropriation for student financial aid increased in SFY 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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Florida

Mr. Levis Hughes
Chief of Student Financial Assistance
Florida Department of Education
325 West Gaines Street, Suite 1514
Tallahassee, FL 32399

Dear Mr. Hughes:

This letter is in response to your May 15, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on August 12, 2013 and via conference call on July 22, 2013) in which the State of Florida 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 Florida a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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.

Florida provided data to the Department indicating that State support for public institutions of higher education decreased by \$418,643,105 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 11.85 percent. As indicated in Florida’s waiver request, the State reduced financial support for student aid for students attending private institutions of higher education by \$25,111,611 in SFY 2012 compared to the preceding five-year average – a reduction of 15.15 percent. However, the State also indicated that some 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 Florida controls the overall appropriation for student financial aid, it has no discretion over whether these funds are used to attend a public or a

private institution. Data from the State indicate that for those sources of financial aid that may be used at either a public or a private institution, expenditures at private institutions of higher education decreased by \$7,651,413 in SFY 2012 from the preceding five-year average – a decrease of 17.02 percent – while the overall appropriation for student financial aid decreased by \$66,546,196 – a decrease of 16.41 percent.

Florida's total State revenues decreased by 5.12 percent in SFY 2012 from the preceding five-year period. However, data submitted by the State also indicate that total State revenues exceeded total State appropriations by \$1,117,000,000 in SFY 2012, 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 2012.¹ While we recognize that the total State appropriations decreased by 7.64 percent, Florida'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 2012 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, Florida cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant efforts" set out in the HEA, Florida must make an additional \$418,643,105 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and \$25,111,611 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 2012.² If Florida makes these additional funds available, these funds would be counted as SFY 2012 funds for purposes of calculating the State's maintenance of effort obligations in future years under the HEA.

¹ The State's August 12, 2013 e-mail to the Department also noted that total State revenues exceeded total State expenditures by \$1,608,100,000 in SFY 2012.

² For certain categories of student financial aid, the State controls the overall appropriation but has no discretion over whether those funds are used to attend a public or a private institution. Therefore, the Department would consider an increase in the State appropriation for student financial aid available to students attending either public or private institutions of higher education as restoration of financial aid for students attending private institutions.

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, 2014 to provide this additional funding. If the Department receives such an assurance by September 18, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Georgia

Dr. Patricia Paterson
Executive Director, College Access Initiatives
Board of Regents of the University System of Georgia
270 Washington Street, S.W.
Atlanta, GA 30334

Dear Dr. Paterson:

This letter is in response to Ms. Amy Jacobs's letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on August 2, August 6, August 7, and August 9, 2013 and via conference call on July 25, 2013) in which the State of Georgia 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 Georgia a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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.

Georgia provided data to the Department indicating that State support for public institutions of higher education decreased by \$170,243,523 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 6.70 percent. As indicated in Georgia's waiver request, the State increased financial support for student aid for students attending private institutions of higher education by \$9,651,477 in SFY 2012 compared to the preceding five-year average – an increase of 16.76 percent.

Georgia's total State revenues decreased by 0.74 percent in SFY 2012 from the preceding five-year period. While we recognize that the total State appropriations decreased by 2.32 percent, we considered the fact that the reductions in support for public institutions of higher education (6.70 percent) were greater than the percentage declines in overall State appropriations (2.32 percent) and overall State revenue (0.74 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 2012 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, Georgia cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant effort" set out in the HEA, Georgia must make an additional \$111,435,586 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) – the amount needed to bring reductions in State support for public institutions of higher education to the level of reductions to total State appropriations. If Georgia makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 23, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

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. Matt Freeman's May 15, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 4 and July 2, 2013 and via conference call on July 18, 2013) 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 decided that it would not be equitable to grant Idaho a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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 \$12,146,633 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 2.95 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 \$175,369 in SFY 2012 compared to the preceding five-year average – a reduction of 12.60 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 \$1,382,080 in SFY 2012 from the preceding five-year average – a decrease of 17.18 percent.

Idaho's total State revenues increased by 0.34 percent in SFY 2012 from the preceding five-year period. While we recognize that the total State appropriations decreased by 2.43 percent, Idaho'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 2012 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, Idaho cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant efforts" set out in the HEA, Idaho must make an additional \$12,146,633 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and \$175,369 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 2012. If Idaho makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 1, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Iowa

Ms. Karen Misjak
Iowa College Student Aid Commission
430 East Grand Avenue, 3rd Floor
Des Moines, IA 50309-1920

Dear Ms. Misjak:

This letter addresses the State of Iowa'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.

Iowa did not submit an Annual Performance Report for the 2012-2013 reporting period. Therefore, Iowa did not demonstrate that the State met the maintenance of effort requirements for State Fiscal Year 2012, nor did Iowa request a waiver of these requirements under §137(c) of the HEA. Therefore, Iowa will not receive an award under the CACG Program for Federal fiscal year 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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Kentucky

Ms. Susan Hopkins
Director of Outreach Services
Kentucky Higher Education Assistance Authority
P.O. Box 798
Frankfort, KY 40602

Dear Ms. Hopkins:

This letter is in response to Mr. Carl Rollins's letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on September 6, 2013 and via conference call on August 6, 2013) in which the State of Kentucky 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 Kentucky a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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.

Kentucky provided data to the Department indicating that State support for public institutions of higher education decreased by \$44,255,424 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 3.81 percent. As indicated in Kentucky's waiver request, the State increased financial support for student aid for students attending private institutions of higher education by \$459,140 in SFY 2012 compared to the preceding five-year average – an increase of 0.69 percent.

Kentucky's total State revenues increased by 6.58 percent in SFY 2012 from the preceding five-year average. Even though the State's revenues increased from the prior five-year average, Kentucky provided 3.81 percent less for public institutions of higher education in SFY 2012, compared to the prior 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 2012 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, Kentucky cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant efforts" set out in the HEA, Kentucky must make an additional \$44,255,424 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 2012. If Kentucky makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 23, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Louisiana

Ms. Nyetta Meaux
Louisiana Office of Student Financial Assistance
P.O. Box 91202
Baton Rouge, LA 70821-9202

Dear Ms. Meaux:

This letter is in response to Dr. Sujuan Boutte's May 22, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 4, 2013 and via conference call on July 18, 2013) in which the State of Louisiana 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 Louisiana a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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.

Louisiana provided data to the Department indicating that State support for public institutions of higher education decreased by \$311,295,841 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 23.40 percent. As indicated in Louisiana's waiver request, the State increased financial support for student aid for students attending private institutions of higher education by \$3,550,653 in SFY 2012 compared to the preceding five-year average – an increase of 29.76 percent.

Louisiana's total State revenues decreased by 10.26 percent in SFY 2012 from the preceding five-year period. While we recognize that the total State appropriations decreased by 9.05 percent, we considered the fact that the reductions in support for public institutions of higher education (23.40 percent) were greater than the percentage declines in overall State appropriations (9.05 percent) and overall State revenue (10.26 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 2012 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, Louisiana cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant effort" set out in the HEA, Louisiana must make an additional \$190,912,881 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) – the amount needed to bring reductions in State support for public institutions of higher education to the level of reductions to total State appropriations. If Louisiana makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 23, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Maine

Ms. Angela Dostie
Finance Authority of Maine
P.O. Box 949
Augusta, ME 04332

Dear Ms. Dostie:

This letter is in response to Ms. Elizabeth Bordowitz's May 15, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 3 and September 6, 2013 and via conference call on July 31, 2013) in which the State of Maine 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 Maine a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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.

Maine provided data to the Department indicating that State support for public institutions of higher education increased by \$5,513,040 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – an increase of 2.33 percent. As indicated in Maine's waiver request, the State reduced financial support for student aid for students attending private institutions of higher education by \$399,411 in SFY 2012 compared to the preceding five-year average – a reduction of 10.57 percent.

Maine's total State revenues increased by 3.13 percent in SFY 2012 from the preceding five-year period. Data submitted by the State also indicate that total State appropriations increased by 5.41 percent from the same 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 2012.

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, Maine cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

To meet the standard of "significant effort" set out in the HEA and receive its CACG award for FFY 2013, the State must make an additional \$399,411 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 2012.¹ If Maine makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 23, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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 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.

If you have questions regarding this letter or any information herein, you may contact Dr. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Maryland

Ms. Melinda Vann
Maryland Higher Education Commission
6 N. Liberty Street, 10th Floor
Baltimore, MD 21201

Dear Ms. Vann:

This letter is in response to Dr. Danette Howard's May 15, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 7 and July 24, 2013 and via conference call on July 22, 2013) in which the State of Maryland 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 Maryland a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012. However, because the State has already met the standard of "significant effort" set out in section 137(d) of the HEA, the Department will allow the State to receive its full Federal fiscal year (FFY) 2013 award in the College Access Challenge Grant (CACG) Program.

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.

Maryland provided data to the Department indicating that State support for public institutions of higher education increased by \$35,912,177 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – an increase of 2.63 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 \$4,054,158 in SFY 2012 compared to the preceding five-year average – a reduction of 7.65 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 decreased by \$1,013,866 in SFY 2012 from the preceding five-year average – a decrease of 0.95 percent.

Maryland's total State revenues increased by 14.26 percent in SFY 2012 from the preceding five-year period. Data submitted by the State also indicate that total State appropriations increased by 14.77 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 2012 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." The Department has determined that, in order to meet the standard of "significant effort" set out in the HEA, Maryland must make an additional \$504,008 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 2012.¹

In Dr. Howard's letter, she indicated that Maryland has appropriated \$112,473,272 for student financial aid in SFY 2014, including \$5,000,000 in supplemental funding approved after the State's original SFY 2014 budget was announced. As described by the State during the July 22, 2013 conference call, these funds will be available for financial aid for students attending either public or private institutions.²

The Department will allow the State to count \$504,008 of the funds made available under the supplemental appropriation in SFY 2014 as a "significant effort" from the State to correct its SFY 2012 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, Maryland's SFY 2014 total student financial aid appropriation (\$112,473,272) exceeds the level required by section 137 of the HEA by a

¹ The Department determined the restoration amount for financial aid for students attending private institutions by adjusting the total shortfall amount (\$4,054,158) 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 0.95 percent reduction in total student aid.

² 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 considers an increase in the total State appropriation for student financial aid as restoration of financial aid for students attending private institutions.

sufficient sum such that counting these funds as SFY 2012 expenditures would not appear to affect the State's ability to meet the requirements of section 137 of the HEA in SFY 2014. The State will be required to count these additional funds as SFY 2012 expenditures in future years when calculating its obligations under section 137(a) of the HEA.

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 FFY 2013 award in the CACG program. The Department considers this issue resolved.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Massachusetts

Ms. Cynthia Orellana
Massachusetts Department of Higher Education
One Ashburton Place, Room 1401
Boston, MA 02108

Dear Ms. Orellana:

This letter is in response to Ms. Aundrea Kelley's May 22, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on July 30, 2013 and via conference call on July 24, 2013) in which the State of Massachusetts 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 information. Based on our review of that information, the Department has determined that it would be equitable to grant Massachusetts a waiver of the requirements of section 137(a) of the HEA for State Fiscal Year (SFY) 2012.

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.

Massachusetts provided data to the Department indicating that, in SFY 2012, State support for public institutions of higher education exceeded the preceding five-year average (SFY 2007 – SFY 2011) by \$76,359,759. As indicated in Massachusetts' request for a waiver, the State reduced financial support for private institutions of higher education by \$2,184,596 in SFY 2012 compared to the preceding five-year average – a reduction of 6.01 percent. However, the State also indicated that the majority of 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 Massachusetts controls the overall appropriation for student financial aid, for the majority of these funds, the State has

no discretion over whether the aid is used to attend a public or a private institution. Data from the State indicate that the overall appropriation for student financial aid that was available to students attending private institutions of higher education increased by \$2,740,051 in SFY 2012 over the preceding five-year average – an increase of 4.52 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 2012. Accordingly, the Department will provide Massachusetts with its full Federal fiscal year 2013 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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
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Duties of the Assistant Secretary

Michigan

Ms. Tammy Saul
Michigan Department of Education
608 W. Allegan Street
P.O. Box 30008
Lansing, MI 48909

Dear Ms. Saul:

This letter addresses the State of 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.

Michigan did not submit an Annual Performance Report for the 2012-2013 reporting period. Therefore, Michigan did not demonstrate that the State met the maintenance of effort requirements for State Fiscal Year 2012, nor did Michigan request 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 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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
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Duties of the Assistant Secretary

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 your May 20, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on August 2, 2013 and via conference call on July 17, 2013) in which the State of Minnesota 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 Minnesota a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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

Minnesota provided data to the Department indicating that State support for public institutions of higher education decreased by \$314,234,100 in the 2011-2013 biennium compared to the preceding three-biennium average (2005-2007, 2007-2009, and 2009-2011) – a decrease of 13.12 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 \$6,751,398 in the 2011-2013 biennium compared to the preceding three-biennium average – an increase of 7.50 percent.

Minnesota's total State revenues increased by 10.79 percent in SFY 2011-2013 from the preceding three-biennium average. Even though the State's revenues increased from the prior three-biennium average, Minnesota provided 13.12 percent less for public institutions of higher education in SFY 2011-2013, compared to the prior three-biennium average.

In considering all of the information provided, we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2011-2013 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, Minnesota cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant efforts" set out in the HEA, Minnesota must make an additional \$314,234,100 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 2011-2013. If Minnesota makes these additional funds available, these funds would be counted as SFY 2011-2013 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 13, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Mississippi

Ms. Marsha Watson
Office of Academic and Student Affairs
Mississippi Institutions of Higher Learning
3825 Ridgewood Road
Jackson, MS 39211

Dear Ms. Watson:

This letter is in response to your May 14, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 10, June 12, July 30, August 1, August 9, and September 3, 2013 and via conference call on July 29, 2013) in which the State of Mississippi 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 Mississippi a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012. However, because the State has already met the standard of “significant effort” set out in section 137(d) of the HEA, the Department will allow the State to receive its full Federal fiscal year (FFY) 2013 award in the College Access Challenge Grant (CACG) Program.

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.

Mississippi provided data to the Department indicating that State support for public institutions of higher education decreased by \$6,667,019 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 0.76 percent. As indicated in Mississippi’s waiver request, the State reduced financial support for student aid for students attending private institutions of higher education by \$336,860 in SFY 2012 compared to the preceding five-year average – a reduction of 7.25 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 \$1,299,612 in SFY 2012 from the preceding five-year average – an increase of 4.36 percent.

Mississippi's total State revenues increased by 3.39 percent in SFY 2012 from the preceding five-year period. Even though the State's revenues increased from the prior five-year average, Mississippi provided 0.76 percent less for public institutions of higher education in SFY 2012, compared to the prior 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 2012 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." The Department has determined that, in order to meet the standard of "significant effort" set out in the HEA, Mississippi must make an additional \$6,667,019 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 2012.

In your August 9 e-mail, you indicated that Mississippi has appropriated \$922,190,471 for public institutions of higher education (exclusive of capital expenditures and research and development costs) in SFY 2014. The Department will allow the State to count \$6,667,019 of the funds made available under the SFY 2014 appropriation as a "significant effort" from the State to correct its SFY 2012 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, Mississippi's SFY 2014 total support for public institutions of higher education (\$922,190,471) exceeds the level required by section 137 of the HEA by a sufficient sum such that counting these funds as SFY 2012 expenditures would not appear to affect the State's ability to meet the requirements of section 137 of the HEA in SFY 2014. The State will be required to count these additional funds as SFY 2012 expenditures in future years when calculating its obligations under section 137(a) of the HEA.

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 FFY 2013 award in the CACG program. The Department considers this issue resolved.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Missouri

Mr. Leroy Wade
Missouri Department of Higher Education
205 Jefferson Street
P.O. Box 1469
Jefferson City, MO 65102-1469

Dear Mr. Wade:

This letter is in response to your May 15, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on September 6, September 10, September 12, and September 16, 2013 and via conference call on August 1, 2013) in which the State of Missouri 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 Missouri a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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.

Missouri provided data to the Department indicating that State support for public institutions of higher education decreased by \$40,492,579 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 4.17 percent. As indicated in Missouri’s waiver request, the State reduced financial support for student aid for students attending private institutions of higher education by \$2,617,091 in SFY 2012 compared to the preceding five-year average – a reduction of 6.39 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 Missouri 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 \$6,677,781 in SFY 2012 from the preceding five-year average – a decrease of 5.54 percent.

Data from the State indicate that Missouri’s total State revenues decreased by 2.62 percent in SFY 2012 from the preceding five-year period. Data submitted by the State also indicate that total State appropriations increased by 0.30 percent from the same five-year average.¹

In considering all of the information provided, we have determined that the State did not face an exceptional or uncontrollable circumstance in SFY 2012 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, Missouri cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of “significant efforts” set out in the HEA, Missouri must make an additional \$40,492,579 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and \$2,268,707 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 2012.² If Missouri makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 26, 2013, the

¹ The State originally reported SFY 2012 appropriations of \$8,296,863,209. In the State’s September 6, 2013 e-mail to the Department, Missouri indicated that this total did not include \$89.6 million in capital improvement appropriations or \$64.8 million in supplemental appropriations in SFY 2012. As these totals should have been included in the data originally submitted to the Department, the State’s SFY 2012 appropriations total has been updated to reflect these additional appropriations at a level of \$8,451,263,209.

² The Department determined the restoration amount for financial aid for students attending private institutions by adjusting the total shortfall amount (\$2,617,091) 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 5.54 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.

Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Nevada

Ms. Lori Brazfield
Director, System Sponsored Programs and EPSCoR Office
Nevada System of Higher Education
5550 W. Flamingo Road, Suite A2
Las Vegas, NV 89103

Dear Ms. Brazfield:

This letter addresses the State of Nevada'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.

Nevada did not submit an Annual Performance Report for the 2012-2013 reporting period showing that the State met the maintenance of effort requirements for State Fiscal Year 2012, nor did Nevada request a waiver of these requirements under §137(c) of the HEA. Therefore, Nevada will not receive an award under the CACG Program for Federal fiscal year 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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

New Hampshire

Ms. Amy Slattery
New Hampshire Department of Education
Division of Higher Education
101 Pleasant Street
Concord, NH 03301

Dear Ms. Slattery:

This letter is in response to Dr. Virginia Barry's May 10, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on July 18, 2013 and via conference call on July 18, 2013) in which the State of New Hampshire 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 New Hampshire a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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 Hampshire provided data to the Department indicating that State support for public institutions of higher education decreased by \$48,342,412 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 36.72 percent. As indicated in New Hampshire's waiver request, the State reduced financial support for student aid for students attending private institutions of higher education by \$1,183,860 in SFY 2012 compared to the preceding five-year average – a reduction of 100.00 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 New Hampshire 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 \$3,798,200 in SFY 2012 from the preceding five-year average – a decrease of 99.74 percent.

New Hampshire's total State revenues increased by 7.64 percent in SFY 2012 from the preceding five-year period. Data submitted by the State also indicate that total State revenues exceeded total State appropriations by \$686,069,181 in SFY 2012, 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 2012. While we recognize that the total State appropriations decreased by 1.11 percent, New Hampshire'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 2012 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, New Hampshire cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant efforts" set out in the HEA, New Hampshire must make an additional \$48,342,412 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and \$1,180,751 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 2012.¹ If New Hampshire makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 1, 2013, the Department will obligate the State's FFY 2013 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 (\$1,183,860) 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 99.74 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

New Jersey

Mr. Eric Taylor
Director, Office of Licensure and CACG
New Jersey Higher Education
P.O. Box 542
Trenton, NJ 08625-0542

Dear Mr. Taylor:

This letter is in response to your May 15, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 7, June 11, June 13, and August 2, 2013 and via conference call on July 29, 2013) 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 initial and supplemental information. Based on our review of that information, the Department has determined that it would not be equitable to grant New Jersey a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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 Jersey provided data to the Department indicating that State support for public institutions of higher education decreased by \$106,699,000 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 5.76 percent. As indicated in New Jersey’s waiver request, the State increased financial support for student aid for students attending private institutions of higher education by \$11,758,879 in SFY 2012 compared to the preceding five-year average – an increase of 13.72 percent.

New Jersey's total State revenues decreased by 4.17 percent in SFY 2012 from the preceding five-year period. While we recognize that the total State appropriations decreased by 3.37 percent, we considered the fact that the reductions in support for public institutions of higher education (5.76 percent) were greater than the percentage declines in overall State appropriations (3.37 percent) and overall State revenue (4.17 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 2012 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, New Jersey cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant effort" set out in the HEA, New Jersey must make an additional \$44,267,485 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) – the amount needed to bring reductions in State support for public institutions of higher education to the level of reductions to total State appropriations. If New Jersey makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 13, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

New Mexico

Dr. Brigitte Russell
New Mexico Higher Education Department
2048 Galisteo Street
Santa Fe, NM 87505

Dear Dr. Russell:

This letter is in response to Dr. José Garcia's May 24, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 10, June 11, August 27, and September 5, 2013 and via conference call on August 28, 2013) in which the State of New Mexico 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 New Mexico a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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

New Mexico provided data to the Department indicating that State support for public institutions of higher education decreased by \$73,314,580 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 9.11 percent. As indicated in New Mexico's waiver request, the State reduced financial support for student aid for students attending private institutions of higher education by \$968,069 in SFY 2012 compared to the preceding five-year average – a reduction of 88.46 percent.¹

¹ We note that, according to the State, during the time period under consideration (SFY 2007 – SFY 2012), 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, nor would such aid, if provided, be counted as State support for financial aid

New Mexico's total State revenues increased by 6.32 percent in SFY 2012 from the preceding five-year period. Data submitted by the State also indicate that total State revenues exceeded total State appropriations by \$371,000,000 in SFY 2012, 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 2012. While we recognize that the total State appropriations decreased by 0.87 percent, New Mexico'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 2012 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, New Mexico cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant efforts" set out in the HEA, New Mexico must make an additional \$73,314,580 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and \$328,000 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 2012. If New Mexico makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 23, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

for students attending private institutions of higher education under section 137 of the HEA. We further note that State support for the remaining non-profit institutions was reduced by \$328,000 from the preceding five year average – a reduction of 72.19 percent.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

New York

Ms. Barbara Hochberg
Director of Grants and Scholarships
New York State Higher Education Services Corporation
99 Washington Avenue
Albany, NY 12255

Dear Ms. Hochberg:

This letter is in response to Ms. Elsa Magee's May 15, 2013 letter to the U.S. Department of Education (the Department) 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 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) 2012.

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, in SFY 2012, State support for public institutions of higher education exceeded the preceding five-year average (SFY 2007 – SFY 2011) by \$156,738,800. As indicated in New York's request for a waiver, the State reduced financial support for private institutions of higher education by \$16,740,728 in SFY 2012 compared to the preceding five-year average – a reduction of 4.56 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 New York 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 \$76,950,400 in SFY 2012 over the preceding five-year average – an increase of 9.43 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 2012. Accordingly, the Department will provide New York with its full Federal fiscal year 2013 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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

North Carolina

Dr. Karrie Dixon
Senior Associate Vice President, Academic & Student Affairs
The University of North Carolina General Administration
910 Raleigh Road, P.O. Box 2688
Chapel Hill, NC 27515

Dear Dr. Dixon:

This letter is in response to your March 15, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via conference call on April 23, 2013) in which the State of North 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 decided that it would not be equitable to grant North Carolina a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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.

North Carolina provided data to the Department indicating that State support for public institutions of higher education increased by \$39,917,623 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – an increase of 1.17 percent. As indicated in North Carolina’s waiver request, the State reduced financial support for student aid for students attending private institutions of higher education by \$10,434,929 in SFY 2012 compared to the preceding five-year average – a reduction of 10.34 percent.

North Carolina's total State revenues increased by 1.48 percent in SFY 2012 from the preceding five-year period. While we recognize that the total State appropriations decreased by 0.34 percent, we considered the fact that the reductions in support for financial aid for students attending private institutions of higher education (10.34 percent) and total State financial aid (16.49 percent) were greater than the percentage decline in overall State appropriations (0.34 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 2012.

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, North Carolina cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

To meet the standard of "significant effort" set out in the HEA and receive its CACG award for FFY 2013, the State must make an additional \$10,434,929 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 2012. If North Carolina makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 1, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Northern Marianas

Mr. Timothy Baker
Director, College Access Challenge Grant
Northern Marianas College
P.O. Box 501250
Saipan, MP 96950

Dear Mr. Baker:

This letter is in response to your June 7, 2013 e-mail to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on May 22, June 3, and June 4, 2013 and via conference call on June 6, 2013) in which the Commonwealth of the Northern Mariana Islands 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 the Northern Marianas a waiver of the requirements of section 137(a) of the HEA for State Fiscal Year (SFY) 2012.

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.

The Northern Marianas provided data indicating that total Commonwealth revenues decreased by 27.57 percent in SFY 2012 from the preceding five-year average (SFY 2007-SFY 2011). As indicated in the request, the Commonwealth reduced financial support for public institutions of higher education by \$1,612,731 in SFY 2012 compared to the preceding five-year average – a reduction of 23.57 percent. The Commonwealth indicated that there are no private institutions of higher education in the Northern Marianas. The reductions in support for public institutions of higher education (23.57

percent) were smaller than the percentage reductions in overall State appropriations (32.18 percent) from the preceding five-year average.

In considering all of the information provided by the Commonwealth, we believe that the Northern Marianas faced a difficult financial situation in SFY 2012. While it is regrettable that the Northern Marianas 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 the Northern Marianas with its full Federal fiscal year 2013 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 Northern Marianas 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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Ohio

Mr. Carlos Bing
Ohio Board of Regents
25 South Front Street
Columbus, OH 43215

Dear Mr. Bing:

This letter addresses the State of Ohio'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.

Ohio did not submit an Annual Performance Report for the 2012-2013 reporting period. Therefore, Ohio did not demonstrate that the State met the maintenance of effort requirements for State Fiscal Year 2012, nor did Ohio request a waiver of these requirements under §137(c) of the HEA. Therefore, Ohio will not receive an award under the CACG Program for Federal fiscal year 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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Oklahoma

Ms. Amanda Paliotta
Vice Chancellor for Budget and Finance
Oklahoma State Regents for Higher Education
655 Research Parkway, Suite 200
Oklahoma City, OK 73104-3603

Dear Ms. Paliotta:

This letter is in response to your May 15, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on August 12, August 14, and August 29, 2013 and via conference call on July 29 and August 29, 2013) in which the State of Oklahoma 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 Oklahoma a waiver of the requirements of section 137(a) of the HEA for State Fiscal Year (SFY) 2012.

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.

Oklahoma provided data indicating that total revenues decreased by 4.03 percent in SFY 2012 from the preceding five-year average (SFY 2007-SFY 2011). As indicated in the request, the State reduced financial support for public institutions of higher education by \$43,760,782 in SFY 2012 compared to the preceding five-year average – a reduction of 4.16 percent. Additionally, in FY 2012, the State increased support for financial aid for students attending private institutions by 3.66 percent. The reduction in support for public institutions of higher education (4.16 percent) was smaller than the percentage reduction in overall State appropriations (4.50 percent) from the preceding five-year average.

In considering all of the information provided by the State, we believe that the State of Oklahoma faced a difficult financial situation in SFY 2012. 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 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 Oklahoma with its full Federal fiscal year 2013 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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Oregon

Ms. Stephanie Carnahan
Oregon University System
P.O. Box 3175
Eugene, OR 97403-0175

Dear Ms. Carnahan:

This letter addresses the State of 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 7, 2013, Oregon submitted data to the Department demonstrating that the State did not meet the maintenance of effort requirements for State fiscal year (SFY) 2012. 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).

Oregon did not meet the maintenance of effort requirements for SFY 2012, nor did the State request 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 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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Pennsylvania

Ms. Jennifer Dugan
Office of 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 15, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on September 5, 2013 and via conference call on August 15, 2013) 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) 2012.

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 \$208,721,778 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 13.19 percent. As indicated in Pennsylvania’s waiver request, the State increased financial support for student aid for students attending private institutions of higher education by \$20,563,256 in SFY 2012 compared to the preceding five-year average – an increase of 14.76 percent.

Pennsylvania's total State revenues increased by 6.17 percent in SFY 2012 from the preceding five-year average. Even though the State's revenues increased from the prior five-year average, Pennsylvania provided 13.19 percent less for public institutions of higher education in SFY 2012, compared to the prior 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 2012 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) 2013 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 2013 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 \$208,721,778 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 2012. If Pennsylvania makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 23, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Puerto Rico

Dr. Ana Helvia 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 your May 30, 2013 e-mail to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on July 31, August 1, and August 12, 2013 and via conference call on July 23, 2013) in which the Commonwealth of Puerto Rico 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 Puerto Rico a waiver of the requirements of section 137(a) of the HEA for State Fiscal Year (SFY) 2012.

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 3.79 percent in SFY 2012 from the preceding five-year average (SFY 2007-SFY 2011). As indicated in the request, the Commonwealth reduced financial support for public institutions of higher education by \$49,675,447 in SFY 2012 compared to the preceding five-year average – a reduction of 6.10 percent. Additionally, in FY 2012, the Commonwealth maintained support for financial aid for students attending private institutions at the same level as the preceding five years.

We understand that the Commonwealth provides higher education appropriations only to the University of Puerto Rico (UPR). According to documents provided by the Commonwealth, under Commonwealth law, UPR is funded according to a formula in which UPR receives an annual appropriation equal to 9.6 percent of the average of net General Fund revenues for the preceding two years (with certain limited exclusions). Each year, the UPR's appropriation is based on estimated revenue, with end of the year adjustments made in subsequent years when actual revenues differ from the estimates. According to the Commonwealth, no changes or adjustments were made to this formula during SFY 2012 or any preceding fiscal year in the relevant comparison period (SFY 2007 – SFY 2011).

In considering all of the information provided by the Commonwealth, we believe that Puerto Rico faced a difficult financial situation in SFY 2012. While it is regrettable that Puerto Rico cut support for UPR, we recognize that these reductions were the result of a statutory formula that, by definition, reduces higher education appropriations when Commonwealth revenues decline. We believe that the Commonwealth's method of funding its sole public institution of higher education is consistent with the key principle of the Department's assessment of waiver requests under section 137 of the HEA – that States experiencing a decline in revenues treat institutions of higher education equitably in the appropriations process. 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 2012. Accordingly, the Department will provide Puerto Rico with its full Federal fiscal year 2013 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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Rhode Island

Ms. Deborah Grossman-Garber
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 6, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 4, June 5, June 11, June 14, and September 6, 2013 and via conference call on August 15, 2013) in which the State of Rhode Island 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 Rhode Island a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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 \$8,788,005 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 4.47 percent. 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 \$1,102,286 in SFY 2012 compared to the preceding five-year average – a reduction of 33.54 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 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 \$161,807 in SFY 2012 from the preceding five-year average – a decrease of 1.57 percent.

Rhode Island's total State revenues increased by 5.30 percent in SFY 2012 from the preceding five-year period. Data submitted by the State also indicate that total State appropriations increased by 1.56 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 2012 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, Rhode Island cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 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 \$8,788,005 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and \$51,597 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 2012.¹ If Rhode Island makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 23, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

¹ The Department determined the restoration amount for financial aid for students attending private institutions by adjusting the total shortfall amount (\$1,102,286) 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 1.57 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.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

South Carolina

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

Dear Dr. Woodfaulk:

This letter is in response to Dr. Richard Sutton's May 15, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on September 6, 2013 and via conference call on August 1, 2013) 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 decided that it would not be equitable to grant South Carolina a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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 \$176,542,132 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 20.01 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 \$3,441,077 in SFY 2012 compared to the preceding five-year average – an increase of 4.55 percent.

South Carolina's total State revenues decreased by 0.14 percent in SFY 2012 from the preceding five-year period. However, data submitted by the State also indicate that total State revenues exceeded total State appropriations by \$435,444,840 in SFY 2012, 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 2012. While we recognize that the total State appropriations decreased by 4.37 percent, 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 2012 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) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant efforts" set out in the HEA, South Carolina must make an additional \$176,542,132 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 2012. If South Carolina makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 23, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

South Dakota

Dr. Colleen O'Neil
Director, Curriculum, Career and Technical Education
South Dakota Department of Education
800 Governors Drive
Pierre, SD 57501

Dear Dr. O'Neil:

This letter is in response to your May 15, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 17, August 1, and August 5, 2013 and via conference call on July 31, 2013) in which the State of South Dakota 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 South Dakota a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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 Dakota provided data to the Department indicating that State support for public institutions of higher education decreased by \$17,192,890 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 11.16 percent. As indicated in South Dakota's waiver request, the State increased financial support for student aid for students attending private institutions of higher education by \$682,667 in SFY 2012 compared to the preceding five-year average – an increase of 23.79 percent.

South Dakota's total State revenues increased by 8.00 percent in SFY 2012 from the preceding five-year average. Even though the State's revenues increased from the prior five-year average, South Dakota provided 11.16 percent less for public institutions of higher education in SFY 2012, compared to the prior 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 2012 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 Dakota cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant efforts" set out in the HEA, South Dakota must make an additional \$17,192,890 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 2012. If South Dakota makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 13, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Tennessee

Mr. Troy Grant
Tennessee Higher Education Commission
Parkway Towers, Suite 1900
404 James Robertson Parkway
Nashville, TN 37243

Dear Mr. Grant:

This letter is in response to Mr. Richard Rhoda's May 15, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on September 5, 2013 and via conference call on July 30, 2013) in which the State of Tennessee 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 Tennessee a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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.

Tennessee provided data to the Department indicating that State support for public institutions of higher education decreased by \$103,284,790 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 8.01 percent. As indicated in Tennessee's waiver request, the State increased financial support for student aid for students attending private institutions of higher education by \$12,718,042 in SFY 2012 compared to the preceding five-year average – an increase of 17.76 percent.

Tennessee's total State revenues increased by 9.23 percent in SFY 2012 from the preceding five-year average. Even though the State's revenues increased from the prior five-year average, Tennessee provided 8.01 percent less for public institutions of higher education in SFY 2012, compared to the prior 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 2012 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, Tennessee cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant efforts" set out in the HEA, Tennessee must make an additional \$103,284,790 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 2012. If Tennessee makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 23, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Texas

Dr. Raymund A. Paredes
Commissioner of Higher Education
Texas Higher Education Coordinating Board
P.O. Box 12788
Austin, TX 78711

Dear Dr. Paredes:

Thank you for your August 8, 2013 letter to Secretary Arne Duncan regarding Texas' request that the U.S. Department of Education (the Department) include Texas' College Access Loan (CAL) program in its calculation of State support for higher education in conjunction with the maintenance of effort requirements under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f. Your letter was referred to my office and I am pleased to respond.

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, or receive a waiver of them, may not receive funds under the College Access Challenge Grant (CACG) Program authorized by section 781 of the HEA, 20 U.S.C. §1141.

According to your letter, the CAL program, operated by the Texas Higher Education Coordinating Board (the Board), provides low-interest education loans to Texas residents eligible for in-state tuition. The program is financed through the issuance of General Obligation bonds, and all loan proceeds are appropriated to the Board by the Texas legislature. In an email communication with the Department on June 11, 2013, and confirmed during a June 19, 2013 conference call, Texas' representatives indicated that interest rates for the CAL program are determined on an annual basis, are set at a level that ensures that the program is self-sustaining, and that the rates would be raised if necessary to maintain these conditions. It is the Department's understanding that, due to the CAL program's design, no General Fund revenues have ever been appropriated for the program. Thus, the Department has determined that the CAL program is not an investment by Texas in support for higher education for purposes of determining the State's compliance with section 137 of the HEA. In addition, it would be contrary to the intent of section 137 of the HEA to treat student loans and grants as equivalent categories of support. Such an approach would allow States to satisfy the maintenance of effort requirements of that section by substituting loan programs, which are substantially paid for by borrowers, for grant programs supported by the State. Consequently, the Department has determined that loans made by the CAL program should not be included in the State's maintenance of effort calculation.

In your letter, you requested that what you characterized as a “new definition” of State support “should apply prospectively and not retroactively.” However, the Department’s decision is consistent with the prior practice of the Department and Texas. The Department has never advised States that loan programs that receive no State funding in the State fiscal years under consideration should be included in maintenance of effort calculations. Moreover, Texas has never included loans under the CAL program in its previous data submissions to the Department under this program. In fact, prior to June 3, 2013, the State had not raised the issue of the CAL program with Department staff. Accordingly, it is Texas that is suggesting a change in the definition of State support rather than the Department.

As support for its position, the State cites a definition of “financial aid” in 20 U.S.C. §1015(f)(4) (§131(f)(4) of the HEA). However, the provision you have relied on specifically defines “Federal and State student financial assistance” solely for purposes of 20 U.S.C. §1015(f), which mandates the creation of a financial aid information website for military members and veterans. This definition is not applicable to any other provision of the HEA, including 20 U.S.C. §1015f. Moreover, section 137 of the HEA does not use the definition in 20 U.S.C. §1015(f).

Texas did not meet the maintenance of effort requirements in State Fiscal Year (SFY) 2012 and therefore is ineligible for a Federal Fiscal Year (FFY) 2013 CACG award unless the State receives a waiver of those requirements or makes a significant effort to correct the violation. In your August 1, 2013 letter to the Department, you officially withdrew Texas’ request for a waiver of the maintenance of effort requirements. Therefore, unless Texas demonstrates a significant effort to correct its SFY 2012 violation, Texas will not receive an award under the CACG Program for FFY 2013. Any information regarding the State’s intended significant effort should be provided to the Department no later than September 13, 2013 so that it may be reviewed prior to the close of FFY 2013.

If you have questions regarding this letter or any information herein, you may contact Dr. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Vermont

Mr. Scott Giles
President and CEO
Vermont Student Assistance Corporation
10 East Allen Street
Winooski, VT 05404-2601

Dear Mr. Giles:

This letter is in response to your September 3, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on June 11, June 12, September 5, and September 20, 2013 and via conference call on June 13 and September 17, 2013) in which the State of Vermont 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 Vermont a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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.

Vermont provided data to the Department indicating that State support for public institutions of higher education decreased by \$4,964,801 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 5.67 percent. As indicated in Vermont's waiver request, the State increased financial support for student aid for students attending private institutions of higher education by \$666,382 in SFY 2012 compared to the preceding five-year average – an increase of 11.31 percent.

Vermont's total State revenues increased by 6.47 percent in SFY 2012 from the preceding five-year average. Even though the State's revenues increased from the prior five-year average, Vermont provided 5.67 percent less for public institutions of higher education in SFY 2012, compared to the prior five-year average.

During the State's September 17 conference call with the Department, Vermont requested that the Department give further consideration to the impact of Tropical Storm Irene and related recovery efforts on the State's ability to meet the maintenance of effort requirements in section 137(a) of the HEA. The Department agreed to accept additional information on this subject, which was provided by the State via e-mail on September 20. The State's submission indicates that the State Fiscal 2012 Budget Adjustment Act, enacted in the spring of 2012, increased spending from the State's General Fund by \$25,500,000, of which \$24,900,000 was directed to Irene recovery efforts. However, even if the Department discounted SFY 2012 revenues and appropriations from the State's General Fund to account for this increased spending associated with Irene recovery efforts, the State would have still had an increase in revenues and appropriations from the preceding five-year period while providing less for public institutions of higher education in that year compared to 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 2012 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, Vermont cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant efforts" set out in the HEA, Vermont must make an additional \$4,964,801 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 2012. If Vermont makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by October 4, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Virginia

Ms. Paula Fisher
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 Mr. Peter Blake's May 13, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on August 28, September 4, and September 12, 2013 and via conference call on July 31, 2013) in which the State of Virginia requests a waiver of the maintenance of effort requirements related to State support for higher education under section 137 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1015f.

We appreciate the time 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 Virginia a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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.

Virginia provided data to the Department indicating that State support for public institutions of higher education decreased by \$176,061,607 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 10.15 percent. As indicated in Virginia's waiver request, the State reduced financial support for student aid for students attending private institutions of higher education by \$555,096 in SFY 2012 compared to the preceding five-year average – a reduction of 0.98 percent.

Data from the State indicate that Virginia's total State revenues decreased by 0.31 percent in SFY 2012 from the preceding five-year period. Data submitted by the State also indicate that total State appropriations increased by 2.96 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 2012 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) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant efforts" set out in the HEA, Virginia must make an additional \$176,061,607 available in support for public institutions of higher education (exclusive of capital expenditures and research and development costs) and \$555,096 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 2012. If Virginia makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 24, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Virgin Islands

Ms. Miriam Osborne-Elliott
Dean of Students
University of the Virgin Islands
RR 1 Box 10,000
Kingshill, St. Croix, Virgin Islands 00850

Dear Ms. Osborne-Elliott:

This letter is in response to Ms. Debra Gottlieb's June 18, 2013 letter to the U.S. Department of Education (the Department) in which the Government of the Virgin Islands 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 the Virgin Islands a waiver of the requirements of section 137(a) of the HEA for State Fiscal Year (SFY) 2012.

Under section 137(a) of the HEA, the territory 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.

The Virgin Islands provided data indicating that total revenues decreased by 9.80 percent in SFY 2012 from the preceding five-year average (SFY 2007-SFY 2011). As indicated in the request, the Virgin Islands reduced financial support for public institutions of higher education by \$2,667,330 in SFY 2012 compared to the preceding five-year average – a reduction of 7.78 percent. The territory indicated that there are no private institutions of higher education in the Virgin Islands. The reductions in support for public institutions of higher education (7.78 percent) were smaller than the percentage reductions in overall State appropriations (9.82 percent) from the preceding five-year average.

In considering all of the information provided by the territory, we believe that the Virgin Islands faced a difficult financial situation in SFY 2012. While it is regrettable that the Virgin Islands 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 territory. Accordingly, the Department will provide the Virgin Islands with its full Federal fiscal year 2013 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 Virgin Islands 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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Washington

Mr. Weiya Liang
Washington Student Achievement Council
917 Lakeridge Way SW
Olympia, WA 98504-3430

Dear Mr. Liang:

This letter addresses the State of Washington'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 16, 2013, Washington submitted data to the Department demonstrating that the State did not meet the maintenance of effort requirements for State fiscal year (SFY) 2012. The data we received demonstrate that Washington 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 public institutions of higher education (excluding capital expenses and research and development costs).

Washington did not meet the maintenance of effort requirements for SFY 2012, nor did the State request a waiver of these requirements under §137(c) of the HEA. Therefore, Washington will not receive an award under the CACG Program for Federal fiscal year 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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

Wisconsin

Ms. Dawn Vick
Division of Intergovernmental Relations
Wisconsin Department of Administration
101 East Wilson Street
Madison, WI 53703-7864

Dear Ms. Vick:

This letter is in response to your June 4, 2013 letter to the U.S. Department of Education (the Department) (supplemented by additional information provided via e-mail on August 13, 2013 and via conference call on August 5, 2013) in which the State of Wisconsin 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 Wisconsin a waiver under section 137(c) of the HEA for State Fiscal Year (SFY) 2012.

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.

Wisconsin provided data to the Department indicating that State support for public institutions of higher education decreased by \$161,555,925 in SFY 2012 from the preceding five-year average (SFY 2007 – SFY 2011) – a decrease of 14.14 percent. As indicated in Wisconsin's waiver request, the State increased financial support for student aid for students attending private institutions of higher education by \$1,219,868 in SFY 2012 compared to the preceding five-year average – an increase of 4.43 percent.

Wisconsin's total State revenues increased by 7.01 percent in SFY 2012 from the preceding five-year average. Even though the State's revenues increased from the prior five-year average, Wisconsin provided 14.14 percent less for public institutions of higher education in SFY 2012, compared to the prior 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 2012 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, Wisconsin cannot receive an award for Federal fiscal year (FFY) 2013 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 2013 award in the CACG program.

The Department has determined that, in order to meet the standard of "significant efforts" set out in the HEA, Wisconsin must make an additional \$161,555,925 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 2012. If Wisconsin makes these additional funds available, these funds would be counted as SFY 2012 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, 2014 to provide this additional funding. If the Department receives such an assurance by September 18, 2013, the Department will obligate the State's FFY 2013 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 2013 CACG award and the State may reapply for CACG funding in FFY 2014.

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. Linda Byrd-Johnson, Acting Deputy Assistant Secretary for Higher Education Programs, at 202-502-7729 or linda.byrd-johnson@ed.gov.

Sincerely,

Brenda Dann-Messier
Delegated the Authority to Perform the Functions and
Duties of the Assistant Secretary

[October 21, 2013]