



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF POSTSECONDARY EDUCATION

SEP 30 2010

THE ASSISTANT SECRETARY

Ms. Cheryl D. Lovell  
Colorado Department of Higher Education  
1560 Broadway, Suite 1760  
Denver, CO 80202

Dear Ms. Lovell:

This letter is in response to your request to the U.S. Department of Education (Department) for a waiver of the maintenance of effort (MOE) requirement under section 137 of the Higher Education Act of 1965, as amended (HEA). As you know, under that section, states are required to meet certain MOE requirements relative to spending for higher education. States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) Program.

Based on the data that Colorado submitted on July 26, 2010, you were informed on August 19, 2010 of the Department's determination that Colorado did not experience a precipitous and unforeseen decline in financial resources and, therefore, did not qualify for a waiver of the MOE requirement under the HEA. Following email correspondence and teleconferences with Department staff, Colorado submitted revised data on September 10, 2010. The revised data included funds provided under the State Fiscal Stabilization Fund (SFSF) program to support higher education. The data also included previously unreported funds Colorado provided for students attending private institutions of higher education. The revised data showed that Colorado met both HEA MOE criteria with the inclusion of these additional funds. Section 14012 of the American Recovery and Reinvestment Act authorizes the Secretary to allow states to treat SFSF funds that are used for elementary, secondary, or postsecondary education as non-Federal funds for the purpose of meeting the MOE requirement under any other education program (including the HEA MOE requirement). The Secretary has flexibility in determining when to allow a state to treat SFSF funds spent on higher education as non-Federal funds for purposes of the HEA MOE requirement. In deciding whether to grant such flexibility, the Secretary considers whether: (1) the State met the SFSF MOE requirements, unless it received a waiver of those requirements; and (2) the percentage of total State revenues spent on elementary, secondary, and postsecondary education (in the aggregate) from one year to the next (in this case, from FY 2008 to FY 2009). (See page 49 of the Department's April 1, 2009 guidance: <http://www2.ed.gov/programs/statestabilization/applicant.html>).

The data provided by Colorado demonstrates that the percentage of Colorado's funding devoted to elementary, secondary, and postsecondary education fell slightly from 48.5% to 48.2% of the state's total expenditures from FY 2008 to FY 2009. Given the relatively small difference in total expenditures from FY 2008 to FY 2009, the Department grants approval for Colorado to use its SFSF funds as non-Federal funds to meet the MOE requirement in section 137 of the HEA. Therefore, Colorado meets the MOE requirement under the HEA and is eligible to receive funds under the CACG program.

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[www.ed.gov](http://www.ed.gov)

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

We have attached the FY 2010 grant award notification (GAN) to this letter. If you have any questions regarding the contents of the letter or the GAN, please contact Karmon Simms-Coates, the CACG Program Manager, at [karmon.simms-coates@ed.gov](mailto:karmon.simms-coates@ed.gov) or 202-502-7807.

Sincerely,

/s/

Eduardo M. Ochoa

Enclosure