



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

NOV - 4 2010

THE ASSISTANT SECRETARY

Ms. Marsha Watson
Project Director
Mississippi Institutions of Higher Education
3825 Ridgewood Road
Jackson, MS 39211

Dear Ms. Watson:

This letter is in response to your request to the U.S. Department of Education (Department) for a waiver of the maintenance of effort (MOE) requirement under section 137 of the Higher Education Act of 1965, as amended (HEA). Under that section, states are required to maintain spending for higher education at least at the average amount spent over the past 5 years for (a) public institutions (excluding capital expenses and research and development costs) and (b) for private institutions (as measured by financial aid/scholarships for students attending private colleges). States that do not meet these requirements may not receive funds under the College Access Challenge Grant (CACG) Program.

Based on the data that Mississippi submitted on July 26, 2010, you were informed on August 19, 2010 of the Department's determination that Mississippi 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, Mississippi submitted revised data on September 20, 2010, which were certified as accurate by the Mississippi Department of Finance and Administration on September 24, 2010. The revised data show that in fiscal year 2009, Mississippi increased spending over the previous 5-year average for public institutions of higher education. The data also indicated that student financial aid for students attending private institutions of higher education decreased. However, we understand that Mississippi awards student financial aid to students and not to institutions and that awards are based on student eligibility with no consideration of the type of institution (public or private) that the student attends. Therefore, while Mississippi controls the overall appropriation for student financial aid, it has no control over whether the funds are used to attend a public versus a private institution. Furthermore, Mississippi submitted additional data indicating that the final 2009 appropriation for student financial aid was larger than the 5-year average, demonstrating that the state maintained its support for overall student aid.¹ Based on

¹ On September 24, Mississippi notified the Department that its original data submission for student financial aid contained annual figures that were larger than the final adjusted appropriations because the state included the revenue from collections, interest income, and other special funds that it uses to supplement the funds appropriated for student aid. The Department used the original figures in determining whether Mississippi met the MOE requirement for private IHEs because these were the only available data that distinguished between student aid to public and private institutions. However, in assessing the state's waiver request, the Department considered the funds over which the State has control—the final adjusted appropriations for student financial aid—to determine whether the State qualified for a waiver.

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these facts, the Department has determined that Mississippi's failure to meet the MOE requirement for private IHEs is due to an "uncontrollable circumstance"—namely, the state's inability to control the distribution of student aid funds between public and private IHEs. Therefore, we are granting Mississippi a waiver of the MOE requirement.

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

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

Sincerely,

/s/

Eduardo M. Ochoa