



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

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

DEC 9 2010

Dear Ms. Grossman-Garber:

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). We apologize for the delay in following up with a formal written response after our e-mail to you on September 28, 2010 and teleconference with you on October 20, 2010.

Under section 137 of the HEA, states are required to maintain spending for higher education at least at the average amount spent over the past 5 years (a) for 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.

Our analysis of the original data Rhode Island provided to us showed that Rhode Island reduced support for public higher education by 5.52 percent in 2009 when compared to the previous 5-year average while reducing total expenditures for the State by 2.31 percent. The data also indicate that the state cut total student financial aid by 19.44 percent and that student financial aid for students attending private schools fell by 23.86 percent. Based on these data, the Department determined that the state qualified for a partial waiver of the MOE requirement under the HEA because the state experienced some decline in financial resources that ultimately caused the state to reduce total expenditures in fiscal year (FY) 2009. The Department determined that it would not be equitable to approve a full waiver because the state had made disproportionate reductions in support for higher education when compared to state spending overall. Consequently, the Department advised Rhode Island that in order to be able to receive CACG Program funds for Federal FY 2010, it would need to restore funding for higher education to a level that is proportional to the overall reduction in state government expenditures.

Restoration of Funds

As we have previously discussed with you, Rhode Island may use State Fiscal Stabilization Funds provided under the American Recovery and Reinvestment Act of 2009 to restore assistance to public institutions of higher education, as long as those funds are not used for capital expenses or research and development.

1990 K ST. N.W., WASHINGTON, DC 20006
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

On November 10, 2010, we received your letter stating that Rhode Island plans to use its State Fiscal Stabilization Funds to restore funding for public institutions of higher education. Your letter and the accompanying letter from Mr. Thomas A. Mullaney, Executive Director and State Budget Officer, clarifies that (a) the State Fiscal Stabilization Funds used to restore funding for FY 2009 will not be re-counted in FY 2010 or in the future for purposes of meeting MOE, and (b) that these restored funds were not used for research and development or for capital expenditures (consistent with the requirement under section 137 of the HEA).

Your November 10, 2010 letter also provided additional data regarding financial aid funds that were available to students attending institutions within the state for FYs 2004-2009 through (1) the Office of Higher Education's National Guard Tuition program and (2) the Rhode Island Higher Education Assistance Authority's Academic Promise Scholarship program. These two sources of funds were not included in the state's original submission of maintenance of effort documentation. Therefore, the Department re-calculated Rhode Island's maintenance of effort for higher education and included these resources in the calculation with the understanding that the state will include these funding streams in future year's MOE submissions.

Recalculation of support for public institutions. Given that the National Guard Tuition program is a student aid program restricted to students attending public institutions of higher education in the state, we included the funds from this program as state support for public institutions and recalculated the MOE for public institutions. The revised MOE calculation for public institutions is attached and shows that the amount of funds that Rhode Island must restore for public institutions of higher education is \$5,254,718 (instead of the previously calculated \$5,793,249).

Recalculation of support for private institutions. In order to include the resources provided under the Academic Promise Scholarship program in the maintenance of effort re-calculation for private institutions, we will need Rhode Island to disaggregate the amount of this scholarship program that was provided to students attending private institutions of higher education within the state. When we receive this information, we will be able to re-calculate the amount that the state would need to restore for private institutions.

With regard to restoring funds for financial aid for students attending private institutions in the state, we understand that Rhode Island awards 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. Thus, we acknowledge that while Rhode Island controls the overall appropriation for most student financial aid, it has no control over whether certain funds are used to attend a public versus a private institution of higher education. Therefore, the Department is not asking Rhode Island to specifically increase aid to students attending private institutions in order to receive its CACG grant. Instead, we have explained that Rhode Island can satisfy the need to restore funding by increasing funding for unrestricted student financial aid that can be used to support students attending private institutions of higher education.

Final Determination

After full consideration of all the information that Rhode Island has provided to support its waiver request, the Department has made a final determination to grant the state a partial waiver. The Department will release FY 2010 funds under the CACG program upon receipt of a letter signed and dated by the governor or authorized representative of the Governor that provides an assurance that Rhode Island will make every effort to restore funding shortages to public and private institutions that occurred in FY 2009. The funding shortages should be restored before July 30, 2011; any amount that is not restored by that date will be deducted from the next allocation Rhode Island is eligible to receive under the CACG program. We are taking this action in part based on the fact that this is the first year that we have used this process to evaluate requests for waivers of the MOE requirement under section 137 of the HEA. We expect that, in the future, states will restore any funding shortfalls prior to receiving CACG funds. The Department appreciates Rhode Island's efforts to resolve its MOE issues, and we look forward to working with you as you continue to increase college access and success for underprivileged students in Rhode Island.

Please note that Rhode Island must retain all records relating to the MOE requirement and the CACG grants (including records showing that the State Fiscal Stabilization Funds were not used for capital expenses or research and development costs) 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 or would like to discuss the information provided in this letter, please contact Karmon Simms-Coates at karmon.simms-coates@ed.gov or 202-502-7807.

Sincerely,

/s/

Eduardo M. Ochoa

Attachment

Support for Public Institutions

A. Calculation of 5-year Averages

Fiscal Year	Support for Public IHEs	Total State Expenditures
2004	\$ 171,133,088	\$ 2,726,472,721
2005	\$ 173,762,431	\$ 2,926,928,737
2006	\$ 180,834,860	\$ 3,073,387,685
2007	\$ 190,080,235	\$ 3,217,760,939
2008	\$ 190,672,821	\$ 3,405,251,368
5-year Average	\$ 181,296,687	\$ 3,069,960,290

B. Calculation of Difference between 5-year Average and 2009

5-year Average	\$ 181,296,687	\$ 3,069,960,290
FY 2009	\$ 171,845,163	\$ 2,998,894,312
Difference	\$ (9,451,524)	\$ (71,065,978)

C. Calculation of Percent Change from 5-year Average to 2009

5-year Average	\$ 181,296,687	\$ 3,069,960,290
Difference	\$ (9,451,524)	\$ (71,065,978)
Percent Change	-5.21%	-2.31%

D. Calculation of Amount of Change Attributable to Changes in Overall State Expenditures

5-year Average (IHE)	\$ 181,296,687
Percent Change (State)	-2.31%
Waived Portion of Cut	\$ (4,196,806)

E. Calculation of Adjusted Shortfall

5-year Average (IHE)	\$ 181,296,687
Waived Portion of Cut	\$ (4,196,806)
FY 2009 (IHE)	\$ 171,845,163
Adjusted Shortfall	\$ (5,254,718)