



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

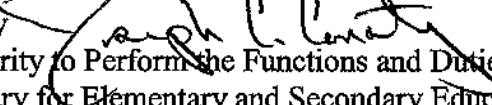
THE ASSISTANT SECRETARY

MEMORANDUM

DATE: **APR 17 2009**

TO: Bridget Dooling/Sharon Marr
Office of Information and Regulatory Affairs
Office of Management and Budget

THROUGH: Stephanie Valentine
Regulatory Information Management Services
U.S. Department of Education

FROM: Joseph C. Conaty 
Delegated Authority to Perform the Functions and Duties of the
Assistant Secretary for Elementary and Secondary Education

SUBJECT: Emergency Clearance of State Fiscal Stabilization Fund MOE Guidance

The U.S. Department of Education's (ED) Office of Elementary and Secondary Education (OESE) recently issued the guidance and an application for a new program, the State Fiscal Stabilization Fund (Stabilization) program. The Stabilization Program was established in the "American Recovery and Reinvestment Act of 2009," which was signed into law by the President on February 17, 2009. The Stabilization program provides \$53,600,000,000 to States to keep teachers in the classroom, to prevent the cutting of valuable education programs, and to help mitigate college tuition increases. Additionally, the Stabilization program will provide resources that States and districts may use to implement important education reforms, such as launching strategies that address inequities in the distribution of highly qualified teachers, building robust data systems that allow districts to better track student achievement, raising standards and strengthening student assessments, and turning around failing schools.

Under the Stabilization program, a State must maintain State support for elementary and secondary education, in each of fiscal years 2009, 2010, and 2011, at least at the level that the State provided in FY 2006. Similarly, a State must maintain State support for public institutions of Higher education (IHEs), not including support for capital projects or for research and development or tuition and fees paid by students, in each of fiscal years 2009, 2010, and 2011, at least at the level of such support in FY 2006. This statutory requirement is called the maintenance-of-effort (MOE) requirement.

In its application, a State must either assure that it will meet the MOE requirement or that, if it does not meet one or more of the MOE requirements, it will meet the criterion for a waiver of the

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MOE requirement. A State that indicates that it meets the criterion for a waiver of the MOE requirement must submit an application for such a waiver. A State seeking a waiver must provide the Department with: (1) data that specifically address the MOE waiver criterion for the applicable years; and (2) an assurance of the Governor or his/her authorized representative that the State has available for inspection documentation that demonstrates that these data are accurate, valid, and reliable. The Department is requesting clearance for Guidance on the Maintenance-of-Effort Requirements in the State Fiscal Stabilization Fund Program. The Guidance provides additional information on the statutory MOE requirements and the process through which a State applies for an MOE waiver, and a sample of a waiver request form.

The Department is requesting that the Office of Management and Budget (OMB) clear the MOE Guidance on an emergency basis. Failure to meet the MOE requirements could affect a State's ability to participate in the program. Therefore, it is extremely important that States have access to the additional guidance on the requirements for receiving an MOE waiver and the level of detail that will be needed to apply for an MOE waiver.

Since the passage of ARRA, OESE staff have worked with ED's Budget Service and the Office of General Counsel to develop a guidance that meets the intent and purposes of the Stabilization program. Using the regular clearance process would put ED well past the 120-day mark for awarding the Stabilization funds that are specified in the Act, which would clearly go against Congress's intent. In sum, not approving this emergency request would cause harm to many states and the students they serve and would delay ED's ability to award the funds to some States in a timely manner.

The Stabilization Fund appears to be a one-time program. Therefore, we expect that the emergency clearance of the MOE Guidance will be needed only for this year.

ED is requesting OMB approval by May 1, 2009.

Thank you for your prompt consideration of my request. If you have questions, please contact Maria Worthen of OESE/AITQ at 202-205-5632 or maria.worthen@ed.gov.