

VI. Maintenance of Effort

A. Stabilization Program Maintenance-of-Effort Requirements

VI-A-1. What are the specific maintenance-of-effort (MOE) requirements that apply to the Stabilization program?

Section 14005(d) of the ARRA contains MOE requirements that apply both to a State's level of support for elementary and secondary education and to its level of support for public IHEs. Those requirements are as follows:

- In each of FYs 2009, 2010, and 2011, the State will maintain State support for elementary and secondary education at least at the level of such support in FY 2006.
- In each of FYs 2009, 2010, and 2011, the State will maintain State support for public IHEs (not including support for capital projects or for research and development or tuition and fees paid by students) at least at the level of such support in FY 2006.

VI-A-2. Will the Department require a State to provide MOE data in its annual Stabilization program reports?

Yes. As part of the annual reports that a State must submit under section 14008 of the ARRA, the Department intends to require each State to provide updated data on the levels of State support for elementary, secondary, and public higher education, as well as data on the State's total revenues (for education and all other purposes) for the relevant years so that the Department, and more importantly the public, will be fully aware of the extent that a State is committed to providing sufficient resources to support education. (See discussion in Part VII of this guidance for additional information concerning the Stabilization program reporting requirements.)

VI-A-3. What is meant by the term "fiscal year" in determining whether a State meets the Stabilization fund MOE requirements?

For purposes of determining MOE, a State may use either the applicable Federal fiscal years (which run from October 1 through September 30) or State fiscal years.

VI-A-4. May a State demonstrate that it is complying with the elementary and secondary education MOE requirements in the ARRA on either an aggregate or a per-student basis?

Yes. In comparing the levels of State support for elementary and secondary education in FYs 2009, 2010, and 2011, a State may demonstrate that it is meeting the MOE requirement on either an aggregate or per-student basis.

VI-A-5. How does a State determine the levels of State support for elementary and secondary education or for public IHEs?

The Department has provided guidance on determining the levels of State support for education for MOE purposes in the instructions accompanying the State Fiscal Stabilization Fund application package. (See Appendix C of the State Fiscal Stabilization Fund Application.)

VI-A-6. In the Stabilization program application, a State must provide assurances that it will comply with the MOE requirements. What if a State anticipates, on the basis of the best available data, that it might not meet the MOE requirements for one or more years?

If a State is unable to confirm in its Stabilization fund application that it will meet both the elementary and secondary education MOE requirements and the public higher education MOE requirements for FY 2009, 2010, and 2011, it must provide in Part 4, Section B of its application the MOE waiver assurance. That assurance confirms, on the basis of the best data available, that the State will meet the criterion for an MOE waiver. A State should submit its MOE waiver request as soon as the data referenced in Illustration 12 is available. As noted in Question VI-A-10, in the near future, the Department intends to issue detailed guidance on how a State applies for an MOE waiver.

VI-A-7. What criterion governs whether the Department may grant a State's request for a waiver of the Stabilization program MOE requirements?

In determining whether a State is eligible for a waiver of the elementary and secondary education MOE requirement or the higher education MOE requirement for a given fiscal year, the Secretary will consider whether or not the State has provided for elementary, secondary, and public higher education, for the fiscal year under consideration, an equal or greater percentage of the total revenues available to the State than the percentage provided for that purpose in the preceding fiscal year.

VI-A-8. Does the same criterion apply to waivers of both the elementary and secondary education MOE requirements and the public IHE MOE requirements?

Yes. Under the ARRA, the same criterion applies to waivers of both the elementary and secondary education and the public IHE MOE requirements.

VI-A-9. For purposes of the MOE waiver criterion, what is meant by the term "total revenues available to the State"?

For purposes of the MOE waiver criterion, the term "total revenues available to the State" may include either (a) projected or actual total State revenues for education and other purposes for the relevant years *or* (b) projected or actual total State appropriations for education and other purposes for those years.

VI-A-10. Will the Department be issuing further guidance on the process for obtaining waivers of the Stabilization program MOE requirements?

Yes. In the near future, the Department intends to issue detailed guidance on how a State applies for an MOE waiver. That document will also provide additional guidance on determining the levels of State support for education and the total revenues available to a State for a given fiscal year.

Illustration 12: Applying the MOE Waiver Criterion

Applying the MOE Waiver Criterion
<p>In determining whether to grant a waiver of the Stabilization program MOE requirements, the Department will carefully examine State data demonstrating the following:</p> <ul style="list-style-type: none"><li data-bbox="240 884 1317 978">• <u>A-1</u>: \$ _____. The aggregate level of State support for elementary, secondary, and public higher education for the fiscal year for which a waiver is sought (i.e., FYs 2009, 2010, or 2011).<li data-bbox="240 1010 1308 1104">• <u>A-2</u>: \$ _____. The total revenues available to the State (for education and all other purposes) for the fiscal year for which a waiver is sought (i.e., FYs 2009, 2010, or 2011).<li data-bbox="240 1136 1317 1230">• <u>B-1</u>: \$ _____. The aggregate level of State support for elementary, secondary, and public higher education for the fiscal year immediately preceding the fiscal year for which a waiver is sought.<li data-bbox="240 1262 1370 1356">• <u>B-2</u>: \$ _____. The total revenues available to the State (for education and all other purposes) for the fiscal year immediately preceding the fiscal year for which a waiver is sought. <p>In order to be eligible for an MOE waiver for a given fiscal year, a State must demonstrate that the percentage of its total State revenues that were used to support elementary, secondary, and public higher education for that fiscal year was equal to or greater than the percentage of its total State revenues that were used to support elementary, secondary, and public higher education for the preceding fiscal year.</p> <p>Relative to the data referenced above, to be eligible for a waiver, the State would have to demonstrate that the percentage obtained by dividing the amount on Line A-1 by the amount on Line A-2 is at least equal to or greater than the percentage obtained by dividing the amount on Line B-1 by the amount on Line B-2.</p>