

Office of Elementary and Secondary Education

MAINTENANCE OF EFFORT

Non-Regulatory Guidance

OVERVIEW:

An LEA may receive funds under a covered program for any fiscal year only if the SEA finds that either —

- the combined fiscal effort per student; or
- the aggregate expenditures

of State and local funds with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort per student or aggregate expenditures for the second preceding fiscal year. (ESEA section 1118(a) and 8521(a).) If an LEA fails to maintain effort by falling below 90 percent of both the combined fiscal effort per student and aggregate expenditures (using the measure most favorable to the LEA), the SEA must reduce the LEA's allocation under a covered program in the exact proportion by which the LEA failed to maintain effort. (ESEA section 8521(b).) ED may waive the maintenance of effort requirement for an LEA if it determines that a waiver would be equitable due to —

- exceptional or uncontrollable circumstances; or
- a precipitous decline in the financial resources of the LEA. (*ESEA section 8521(c).*)

CHANGES TO MAINTENANCE OF EFFORT REQUIREMENTS

The ESEA, as amended by the ESSA, made several updates to the maintenance of effort provision. Please note that provisions that did not change, including the information on expenditures to be included, expenditures to be excluded, and the definition of preceding fiscal year, are still available on page 11 of the 2008 Title I fiscal guidance [available at: <http://www.ed.gov/programs/titleiparta/fiscalguid.doc>] and remain applicable.

UPDATES TO COVERED PROGRAMS

Updated Programs to which the Maintenance of Effort Requirement Applies

- Title I, Part A – improving basic programs operated by LEAs
 - Title I, Part D – prevention and intervention programs for children and youth who are neglected, delinquent, or at-risk
 - Title II, Part A – supporting effective instruction
 - Title III, Part A –English language acquisition, language enhancement, and academic achievement
 - Title IV, Part B – 21st Century Community Learning Centers
 - Title V, Part B, Subpart 2 – Rural and low-income school program
 - Title VI, Part A, Subpart 1 – Indian education
- (ESEA sections 8101(11), 6118(c), 8521(a).)*

REDUCTION FOR FAILING TO MAINTAIN EFFORT

An SEA must reduce an LEA's allocation under a covered program if the LEA fails to maintain effort. Prior to the ESSA, the reduction was made based on failing to maintain effort compared to the preceding fiscal year only. Under the ESSA, the SEA has added flexibility and the reduction will be made based on the new requirement below.

WAIVER FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES

The statute provides two bases (an exceptional or uncontrollable circumstances or a precipitous decline in the financial resources of an LEA) to warrant the Secretary's granting a waiver of maintenance of effort. With respect to exceptional or uncontrollable circumstances, prior to the ESSA, the statute included the example of a natural disaster. Under the ESSA, a new example was inserted so that exceptional or uncontrollable circumstances also include a change in the organizational structure of the LEA. In addition to these two examples listed in the statute, there can be other instances of exceptional or uncontrollable circumstances that might warrant when a waiver request will be considered.

New Example for What Would Qualify an LEA to Receive a Waiver

- Exceptional or uncontrollable circumstances, such as a change in the organizational structure of the LEA.
- (ESEA section 8521(c)(1).)*

FREQUENTLY ASKED QUESTIONS

1. What are examples of a “change in the organizational structure of an LEA” that could potentially qualify an LEA for a waiver of the maintenance of effort requirement?
 - a. **ANSWER:** Below is a list of examples for what a change in the organizational structure of an LEA might mean.
 - i. • An LEA changes its configuration. For example:
 1. - The LEA merges with another LEA.
 2. - The LEA divides into two or more LEAs.
 3. - The LEA eliminates grade levels (e.g., previously served grades K-12 and now serves grades K-8)
 - ii. • An LEA changes its management or operations structure to create economies of scale to be more efficient. For example, each school in the LEA employs budget and fiscal management staff. The LEA makes the decision to consolidate budget and fiscal management staff into a single team located in the central office.
2. How does a waiver of maintenance of effort affect an SEA’s determination of whether an LEA failed to maintain effort for one or more of the five immediately preceding fiscal years?
 - a. **ANSWER:** If an LEA receives a waiver of the maintenance of effort requirement from the Department for a given fiscal year, the LEA has effectively maintained effort for that fiscal year. Accordingly, in determining whether the LEA had failed to maintain effort for one or more of the five immediately preceding fiscal years, the SEA would count the year in which the LEA received a waiver as a year of maintaining effort.
3. If an LEA wishes to request a waiver of maintenance of effort based on a change in its organizational structure, what evidence should an LEA provide to the Department to demonstrate that the change in organizational structure caused the LEA to fail to maintain effort?
 - a. **ANSWER:** In requesting a waiver based on a change in its organizational structure, an LEA would need to provide evidence of that change and the reasons why the change caused the LEA to fail to maintain effort. To explain the change in its organizational structure, the LEA might provide a narrative description of the change or a visual, organizational chart or map, if relevant. The LEA would also need to explain why the change caused the LEA to fail to maintain effort. In doing so, the LEA might show its expenditures related to its organizational structure before and after the change to demonstrate that the change resulted in lower expenditures.