



Office of the Governor

JIM GIBBONS
GOVERNOR

March 18, 2009

The Honorable Arne Duncan
Secretary of Education
LBJ Education Building, Room 7W311
400 Maryland Avenue, SW
Washington, DC 20202

Dear Mr. Secretary,

Section 14012 of the American Recovery and Reinvestment Act of 2009 (ARRA) provides that a state may apply for a waiver or modification of maintenance of effort requirements set forth in Title XIV of the ARRA if a state has "experienced a precipitous decline in financial resources . . ." The State of Nevada hereby requests such a waiver with respect to maintenance of effort requirements applicable to funding in the ARRA for post-secondary education. The State of Nevada, by separate letter, will certify that the required maintenance of effort levels for elementary and secondary education has been satisfied.

Timing of the Waiver Request

Information disseminated by the United States Department of Education states that application forms for funds from the State Fiscal Stabilization Fund (SFSF) will be promulgated in the near future. Nevada has applied for a waiver notwithstanding the lack of a formal SFSF application form due to unique timing issues. In Nevada, the state Legislature meets for 120 days biennially in odd-numbered years. At the conclusion of the legislative session, a budget for the next two state fiscal years is adopted. Nevada's fiscal year runs from July 1 to June 30. The current legislative session is set to expire on June 1, 2009. At the conclusion of the legislative session, the Legislature will adopt and submit to my office a budget for fiscal years 2010 and 2011 (July 1, 2009 – June 30, 2011).

We are already well into the legislative session in Nevada and therefore time is of the essence. Categorical ARRA funds must be applied for by the Governor and thereafter submitted to the Nevada Legislature for appropriation and inclusion in the next biennium. I have therefore chosen to apply for the Section 14012 waiver at this time, and will supplement this request with any specific information requested by your office or as required by any other specific regulations or directives promulgated by your office in the future.

Scope of Waiver Request

Section 14005(d)(1)(B) of the ARRA provides that a state applying for distribution from the SFSF “will, in each of fiscal years 2009, 2010, and 2011, maintain State support for public institutions of higher education (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 fiscal year 2006.”

For purposes of the SFSF, a “‘fiscal year’ shall have the meaning given such term under State law.” ARRA Section 14002(a)(2)(C). Therefore, the higher education maintenance of effort requirement in Nevada represents that for fiscal year 2009 (July 1, 2008 – June 30, 2009), 2010 (July 1, 2009 – June 30, 2010), and 2011 (July 1, 2010 – June 30, 2011), Nevada must fund higher education at or above the level of applicable State funding in fiscal year 2006 (July 1, 2005 – June 30, 2006).

The State of Nevada is applying for a waiver under Section 14005(d)(1)(B) only. No waiver is requested under Section 14005(d)(1)(A) as maintenance of effort requirements in the ARRA for elementary and secondary education are satisfied.

Rationale for Waiver Request

The Department of Education has yet to announce formal criteria required in an application for a waiver. Because time is so short in Nevada, I felt obligated to at least set the process in motion by requesting a waiver via this letter. Once specific criteria are set forth, we will supplement this request accordingly.

Regardless, some background on the economic situation in Nevada will show that the State has indeed “experienced a precipitous decline in financial resources . . .” as contemplated in Section 14012 of the ARRA.

In June of 2007, I signed into law the legislatively approved budget for fiscal years 2008 and 2009. In Nevada, the state budget is approved based not on actual revenues, but on projected revenues. The 2007 budget was determined on two-year fiscal projections of major sources of state revenue. The two largest revenue sources in Nevada are the sales tax and the gaming tax.

Nevada’s reality is that in fiscal year 2009, sales tax revenues have declined by 7.7% as compared to the same period in fiscal year 2008. Gaming tax revenues have declined by 20.3% during that same period. By comparison, in fiscal year 2008, sales tax revenues were down 3.4% from the prior year and gaming tax revenues were down 6.0%. Nevada’s economic downturn has had a dramatic and ongoing impact on state revenues causing significant funding issues.

The decline in state revenues is, of course, symptomatic of what is happening with the state and national economy. Nevada’s unemployment rate has increased from 4.3% in 2006 (22nd lowest in the United States) to 9.4% in January of 2009 (7th highest in the United States). Statewide unemployment is expected to top 10% very soon and continue over 10% into 2010. Housing prices, which were still rising in Nevada in the first quarter of 2007, fell a nation-leading 22% as of the end of 2008.

Nevada also ranks at or near the highest in the nation in terms of adjustable rate and subprime mortgages outstanding. Experts estimate that one of every two homeowners in Nevada owes more on their home than the home is worth.

The same pattern exists in the commercial and industrial markets. Nevada's single largest industry, tourism, has been impacted by the economic downturn with casino-hotels laying off 16,000 employees during the past 12 months, halting several major construction projects that were in the construction phase and signaling that financial restructuring may be inevitable. The combined result of the downturn in the commercial and economic sector has resulted in the loss of nearly 60,000 jobs, or 4.7% of Nevada's workforce over the last 12 months.

Nevada's struggles with unemployment and foreclosures, as well as dramatic increases in food stamp participation, have resulted in Nevada recently being ranked as the number one state in economic distress in the country by the Kaiser Family Foundation. (Kaiser Family Foundation, State Health Facts, <http://www.statehealthfacts.org/comparetable.jsp?ind=649&cat=1>).

As Nevada continues to endure these difficult economic times, the state government is charged with preparing and implementing a state budget for the next biennium. In order to maintain the current level of state services into the next biennium, Nevada would need just over \$8 billion in general fund revenue. The latest fiscal projections show that Nevada can expect to receive just over \$5.7 billion in general fund revenue over the next biennium.

Over the past year I have called two special sessions of the Nevada Legislature to address the ongoing revenue shortfall. Those sessions have resulted in spending reductions of \$736 million, including a complete depletion of \$267 million from Nevada's Fund to Stabilize the Operation of State Government (i.e. the "Rainy Day Fund").

This massive and unprecedented revenue shortfall means that Nevada faces some very difficult budget decisions in the next few months. I proposed a balanced budget to the Legislature in January of 2009 that does three things: dramatically reduces state spending; increases state revenue in the form of a voter-approved room tax increase (expected to bring in less than \$290 million in the biennium); and reallocates the distribution of other tax dollars.

Nevada's general fund budget is primarily allocated to four areas: K-12 education; health and human services; public safety; and higher education. While all of these areas are targeted for budget reductions, the highest percentage reduction has been proposed in higher education.

In fiscal year 2009, Nevada's System of Higher Education (NSHE) received \$683.8 million in general funds. For fiscal years 2010 and 2011, I have proposed funding NSHE at \$424.3 and \$419.6, respectively.

In fiscal year 2006, which is the relevant year for purposes of calculating the maintenance of effort requirement in the ARRA, NSHE received \$555.9 million. That appropriation represents a 9.7% increase over the appropriation the previous fiscal year. It should be noted that the amounts referenced in this paragraph and the preceding paragraph exclude "support for capital projects or for research and development or tuition and fees paid by students" as required by Section 14005(d)(1)(B) of the ARRA. As you can see, to reinstate funding to NSHE in order to meet the maintenance of effort required by the ARRA would mean Nevada must appropriate approximately an additional \$268 million to NSHE in the next biennium.

The bottom line is that the economic difficulties facing Nevada prevent my recommendation that an additional \$268 million be appropriated to NSHE to satisfy the maintenance of effort requirement – it is

simply money we do not have. Nonetheless, a waiver of the maintenance of effort requirement would provide over \$396 million in State Fiscal Stabilization Funds to Nevada, which would allow offsets to both the reductions in higher education and to reductions in K-12 education, including proposals to reduce teacher pay by 6%, eliminate teacher signing bonuses and merit pay, and significant reductions in teacher training facilities and opportunities.

Thank you for your attention to this matter of great importance to all Nevadans. If there is any further information my office can provide, please let me know. Again, I ask that your office act with expediency to grant this waiver request so that the State Fiscal Stabilization Fund monies allocated to Nevada can be accessed and immediately used to protect and preserve all levels of education.

Sincerely,

A handwritten signature in blue ink, reading "Jim Gibbons". The signature is fluid and cursive, with the first name "Jim" and last name "Gibbons" clearly legible.

JIM GIBBONS
Governor

Cc: U. S. Senator Harry Reid
U. S. Senator John Ensign
U. S. Congresswoman Shelley Berkley
U. S. Congressman Dean Heller
U. S. Congresswoman Dina Titus
Assembly Speaker Barbara Buckley
Senate Majority Leader Steven Horsford
Senate Minority Leader William Raggio
Assembly Minority Leader Heidi Gansert
Jim Rogers, Chancellor
Keith Rheault, Superintendent of Education
Daniel Klaich, Executive Vice Chancellor