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"Maintenance of Effort"

An Evolving Federal-State Policy Approach to Ensuring College Affordability

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Context

Congress has recently focused on the complex relationship between federal student aid, states' funding appropriations for higher education, and institutional tuition and fee levels. Fueling this focus is the ongoing cost shift in public higher education, from states to students and families, as well as to the federal government via student aid programs. This shift in who pays for education is primarily a consequence of gradual state disinvestment in public higher education. As a result, college officials have compensated for the loss of state dollars with a combination of cost-cutting measures, reductions in student enrollment, and an increased reliance on student tuition and fee revenues.

The shift in higher education funding, from states to students—driven by insufficient, and in many cases, sharply reduced state appropriations for higher education—has placed more pressure on federal lawmakers to expand existing student aid programs. Increased federal investment in student aid has helped negate the impact of rising tuition and fees. The trend in states' disinvestment in public higher education is especially problematic considering the burgeoning student enrollments occurring in many states. As a result, recent federal legislation has included financial incentives for state lawmakers to maintain specified minimum funding levels for public higher education in order to dissuade states from substantially reducing their appropriation commitments. In establishing these "maintenance of effort" provisions that determine minimum funding thresholds states must meet in order to receive specified federal funds, Congress intended for these federal monies to *supplement* state resources aimed at supporting institutions and students, not *supplant* states' fiscal commitments to higher education.

An analysis of state applications for the American Recovery and Reinvestment Act (ARRA) of 2009 reveals that its maintenance of effort provision appears to have successfully limited the amount of disinvestment in higher education during the current recession. This suggests that federal incentives and disincentives can help assure that states maintain adequate financial support to public colleges and universities, and in so doing, can contribute to college affordability. This brief explores the arguments for and against such "maintenance of effort" provisions. It also explores the relationships and responsibilities of the federal government and state legislatures in providing affordable higher education access, and discusses the prospects for the continued use of this federal-state accountability measure.

Maintenance of Effort—A New Public Higher Education Funding Paradigm

An emerging policy solution to counter states' funding cuts to their public higher education systems is the inclusion of "maintenance of effort" (MOE) provisions in federal legislation. These provisions stipulate that the federal government will offer states a financial incentive in exchange for their "maintenance" of a prescribed level of funding "effort." This reflects a changing dynamic in higher education finance, given that the federal government has not traditionally been involved in efforts to make college affordable, aside from funding federal student aid programs. The use of MOE provisions to protect state appropriations to higher education also establishes federal expectations of states similar to those formed in 1965 with the passage of the Elementary and Secondary Education Act (ESEA); this has proven effective in preventing many states from supplanting state funding commitments to elementary and secondary education.

The rationale behind the higher education MOE provision was first advanced in 2007 in *testimony* by F. King Alexander to the U.S. House of Representatives' Committee on Education and Labor, supported by the American Association of State Colleges and Universities (AASCU). During the proceedings, two federal lawmakers, Rep. George Miller (D-CA) and Rep. John Tierney (D-MA), promoted the idea that the federal government could leverage its higher education spending commitments to incentivize state legislative decisions affecting public colleges and universities, which enroll nearly 75 percent of all students and play a critical role in U.S. economic competitiveness. In so doing, the Congressmen argued, such incentives would help ensure that federal monies were used to *supplement* state resources for public higher education, not *supplant* them. The intent of the MOE measure was to ensure that state legislators did not subvert college access by making corresponding reductions or insufficient increases in state appropriations to higher education.

Months later, Representatives Miller and Tierney, with support from lawmakers in both chambers, pushed through passage of the first MOE legislation affecting state appropriations for higher education. The provision was included in the newly created College Access Challenge Grant Program contained in the Higher Education Opportunity Act of 2008 (HEOA), H.R. 4137—the most recent reauthorization of the Higher Education Act of 1965.

Precedent

The inclusion of MOE provisions in federal legislation is not a new phenomenon. However, their fairly recent introduction into state postsecondary education is noteworthy. Prior to the HEA reauthorization in 2008, the only existing federal-state funding partnership for postsecondary education was the Leveraging Education Assistance Partnership (LEAP), a $64 million annually-funded program initially designed to encourage states to develop state student financial aid programs. When first developed in 1972, the program was known as the State Student Incentive Grant Program (SSIG) and was intensely lobbied for by private higher education institutions as a means to create state funding streams to all institutions regardless of their public or private status. Prior to the development of the SSIG, about half of the states had developed student aid programs and many maintained strong constitutional restrictions on the use of the public funds by private institutions.

When the program was first authorized in 1972, 28 states had undergraduate need-based grant programs. By 1976, 39 states had developed such programs. By establishing federal incentives through the use of matching funds, the federal government reshaped state legislative thinking to allow state monies to flow to both private and public institutions through state student aid programs. Need-based state student grant aid programs now exist in all but one state. It is notable that many of these programs today disproportionately aid private-sector and high-priced institutions because they tend to award more aid to students attending more costly institutions. As a result, less costly public colleges and universities are disadvantaged in their ability to maintain their access-oriented missions. Currently, the state-matching requirement has long since been surpassed and the Obama administration has called for the program to be discontinued.

Other major pieces of federal legislation utilize different MOE provisions. These include the Elementary and Secondary Education Act of 1965 (ESEA)—reauthorized in 2001 as the No Child Left Behind Act (NCLB)—the Individuals with Disabilities Act (IDEA) and welfare benefits under the Temporary Assistance to Need Families (TANF) program.

MOE provisions in the ESEA, previously mentioned, have a proven record of serving as an effective means of preventing state use of federal funds to supplant K-12 educational support. The MOE provisions included in ESEA place a requirement on both the state and the local school systems to maintain a funding level no less than 90 percent of either total aggregate spending on public education or the amount expended per pupil for the previous year. If these levels are not maintained, federal funds are reduced proportionate to the cuts. While legislative language exists allowing states to appeal for a waiver, the U.S. secretary of education has very little authority to grant a waiver. Numerous federal court cases contesting states' attempts to use federal ESEA Title I funds to supplant existing state funding have resulted in the courts consistently ruling in favor of the federal government's right to require MOE provisions. Due to these provisions, states have been historically reluctant to reduce funding for K-12 programs and have instead targeted other education programs.

IDEA includes a more restrictive MOE provision. States may not reduce the amount of money supporting education for children with disabilities below the amount provided during the preceding fiscal year (with certain exceptions). The TANF block-grant program, on the other hand, requires states to spend at a level equal to 75 percent of their 1994 contribution to the program, or 80 percent if they fail to meet worker-participation rates.

Maintenance of Effort and Postsecondary Education

As mentioned earlier, a broader version of MOE was formally introduced into federal postsecondary education legislation in the Higher Education Opportunity Act of 2008 (HEOA). The legislation included a provision that authorized funds to states for a College Access Challenge Grant Program. The program is designed to foster partnerships to increase low-income students' enrollment in college. To be eligible for these federal matching grants, states are required to maintain their higher education funding effort at a level no less than the average amount appropriated during the previous five years. To date, every state has received a grant. The program was initiated with a total annual federal appropriation of $66 million, equal to approximately one-tenth of one percent of total state and local spending on public higher education operating support. This amount was arguably insufficient to influence state lawmakers' funding decisions affecting public higher education. However, with the recent passage of the Health Care and Education Reconciliation Act (H.R. 4872), the College Access Challenge Grant Program was expanded to $150 million annually over the next five years, for a total investment of $750 million.

Another MOE provision with significant impact on both K-12 and higher education was included in the American Recovery and Reinvestment Act of 2009 (ARRA), which contained nearly $40 billion in State Fiscal Stabilization Funds (SFSF) to help states shore up their elementary, secondary and postsecondary education budgets. The legislation requires states to use the SFSF monies to minimally fund K-12 and higher education at their 2006 appropriated levels for fiscal years 2009, 2010 and 2011. In the Jobs for Main Street Act (H.R. 2847), passed by the U.S. House of Representatives in December 2009, states would only be eligible for additional K-12 and higher education funds if they maintained FY 2009 levels for total state spending in those education sectors. Congressman George Miller (D-CA) has introduced the Local Jobs for America Act (H.R. 4812), which contains a similar provision. It is anticipated the Senate will take up similar legislation later in the spring of 2010 also including MOE language. Clearly, Congress is becoming increasingly concerned about federal funds supplanting state funding, rather than supplementing it.

However, not all stakeholders in the higher education and state governance communities agree with many federal lawmakers' point of view. The primary arguments both for and against MOE language are outlined below.

Arguments for the Inclusion of Federal Maintenance of Effort Provisions Affecting Higher Education State Support

Substantive arguments support including MOE provisions in federal higher education legislation to ensure college access and affordability. An overarching theme is the need to prevent further erosion in states' ability to develop a high-skill, high-knowledge workforce critical to national economic competitiveness. Many stakeholder groups in higher education, among them public college and university presidents and student groups, have supported MOE provisions. Primary rationales for including them in federal legislation are that they:

- Enable the federal government to pursue on a sustained basis national educational attainment and workforce priorities that it in part funds;
- Leverage federal resources to incentivize states to maintain their funding responsibilities for public higher education;
- Can help mitigate rising tuition prices by encouraging states to invest adequately in their public higher education systems;
- Provide a more predictable funding framework for state colleges and universities, thus diminishing the fluctuation in state funding for higher education that has long been associated with the ebb and flow of economic cycles; and
- Respect state and institutional sovereignty by providing financial incentives, but not legal mandates or tuition control.

Meeting National Educational Attainment Goals: Access to an affordable, high-quality college education is not simply a state concern, but a national priority with implications for America's global competitiveness. Recognizing the importance of human capital to the nation's economic security, President Barack Obama has made increasing educational attainment rates among the nation's citizens a top domestic policy priority. Major initiatives underway by the Bill and Melinda Gates Foundation and Lumina Foundation for Education underscore the necessity of increasing the nation's output of citizens equipped with postsecondary credentials. Higher education-related MOE provisions serve as a means for the federal government to assist and encourage states in their efforts to build labor market capacity necessary to compete internationally.

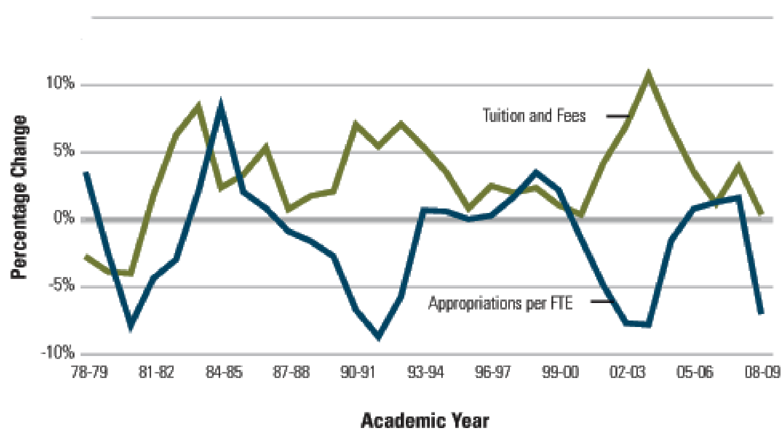
Maintaining State Funding Responsibilities: In recent years, numerous federal hearings and discussions focused on ways to monitor or control public college and university tuition and fee increases. However, little consideration was given to the primary reason for these increases: state appropriations have not kept pace with increases in postsecondary enrollment and in many cases, have been sharply reduced. In calling for the inclusion of the MOE provision in the HEOA, numerous members of the U.S. House of Representatives Education and Labor Committee were concerned that pouring billions of dollars of new investment into federal student aid would ultimately not have its intended effect in expanding educational access if state legislatures continued to cut financial support for their higher education systems.

Mitigating Rising Tuition Prices: States' collective investment in each full-time enrolled student declined by $1,000 between fiscal years 2000 and 2009, according to the State Higher Education Executive Officers (SHEEO) organization. Much of this disinvestment has been made up through increases in tuition and fees, often paid for by student loans. This leads to concerns over growing debt burdens faced by citizens.

The MOE provisions are based on the fact that a significant factor contributing to the rapidly rising cost of college has been the continual erosion in most state governments' commitment to maintain levels of public funding necessary to educate growing enrollments. State funding is critical to ensuring college affordability, as illustrated by data showing a relatively direct inverse relationship between changes in levels of state appropriations and tuition prices (see Figure 1). Large cuts in state support often result in big jumps in tuition prices.

Enhancing Higher Education Funding Stability and Predictability: Another benefit of the MOE provisions are that they lend greater predictability to higher education funding. As evidenced in Figure 1, state appropriations vary greatly from year to year, complicating system and institutional budgeting and strategic planning efforts. Clearer state funding expectations are a prerequisite for improving long-term fiscal planning capabilities involving such activities as academic program development, enrollment planning, capital construction and tuition setting.

Figure 1. Annual Percentage Changes in State Tax Appropriations for Higher Education per Public Full-Time Equivalent (FTE) Student and in Tuition and Fees at Public Four-Year Institutions in Constant 2008 Dollars, 1978-1979 to 2008-2009.



Source: The College Board, Trends in College Pricing, 2009.

Ensuring State Independence on Higher Education Policy: Finally, federal MOE language only calls for sustained financial investments by the states in public higher education; it does not overreach into other policy issues within the postsecondary sector. MOE provisions seek to ensure that states provide sufficient levels of appropriations as to minimize tuition increases; they do not seek to specifically control tuition prices or otherwise impinge upon the authority of institutional or system governing boards.

Arguments Against Federal Maintenance of Effort Provisions Affecting Higher Education State Support

MOE provisions have been met with criticism from groups representing state lawmakers and governors, such as the National Governors Association (NGA) and the National Conference of State Legislatures (NCSL). Objections to the MOE provisions include:

- Undermining by the federal government of state policymakers' control over state and local priorities, given already existing requirements to fund certain program areas (such as Medicaid);
- Reluctance by state officials to substantially increase funding for higher education due to ensuing commitments to provide funding at higher future thresholds, as is required by current MOE provisions;
- A potential increase in fiscal inequities among states, given that those in stronger fiscal circumstances may be better positioned to meet MOE commitments during economic downturns, while the potential loss of federal funds resulting from the inability to meet MOE provisions may exacerbate budgetary constraints faced by less prosperous states; and
- State lawmakers' objection to federal intrusion into education policy, a power not specifically delineated to the federal government in the Constitution.

Undermining of State and Local Priorities: Some fear that MOE provisions will be inappropriately used to influence state decisions on public policy matters beyond the scope of higher education and intrude on the legitimacy and role of elected governors and state legislatures. The amount of money involved in federal initiatives, some argue, will lead to the federal government having too much influence over a broad set of policy issues. Others suggest that the federal MOE provision does not account for the diverse economic, social, geographic and political priorities of states and communities. With so much funding at stake, the provision could give incentives to states to alter their funding agendas to fit a "one size fits all" mold and thereby risk ignoring legitimate state and local needs to meet an arbitrary funding threshold.

Others have asserted that MOE provisions may make greater proportions of state budgets "de-facto" mandatory spending, further complicating state legislatures' budget-setting responsibilities and hindering discretionary use of limited fiscal resources. The NGA estimates that combined with federally mandated Medicaid expenditures, the higher education MOE requirement in the HEOA will result in the federal government dictating spending for one-third of all state revenues.

Counterproductive to State Higher Education Funding: The NGA and NCSL also maintain that including MOE language in federal legislation may be counterproductive for state higher education funding. During periods of economic scarcity, discretionary budget items like higher education usually face budget reductions while states seek to protect Medicaid and K-12 education. However, during periods of economic prosperity, higher education may receive greater appropriations. Thus the organizations theorize that state officials may be unwilling to appropriate large increases in spending for MOE-related expenditures because they will have a higher threshold to maintain in future years. They also suggest that state lawmakers may be more reluctant to make key investments in capital and research and development projects related to higher education, which are not included in MOE calculations.

Table 1. States Applying for Federal Higher Education Maintenance of Effort Waivers Pertaining to the American Recovery and Reinvestment Act of 2009.

	FY 09	FY 10	FY 11
Alabama		X	
Colorado		X	
Florida		X	X
Idaho			X
Iowa		X	
Kentucky		X	X
Louisiana		X	
Massachusetts		X	X
Nevada		X	X
New Jersey	X		
Puerto Rico		X	X
Rhode Island	X	X	X
South Carolina	X	X	X

Source: U.S. Department of Education, 2010.

Lack of Consideration for Economic Inequalities among States: The relative wealth, economic strength and overall capacity to fund major investments such as public higher education varies greatly from state to state, thus placing less prosperous states at a disadvantage when it comes to meeting federal MOE obligations, argue some. While waiver opportunities exist for states to seek an exemption from MOE requirements based on severe economic or fiscal circumstances, the provision language does not recognize states' relative ability to react to changing economic conditions and budgetary circumstances, and thus the capacity to meet higher education funding obligations.

Growing Federal Influence over a State Responsibility: Finally, states have historically taken the lead in providing access to public education, given that the U.S. Constitution does not specifically articulate the federal government's role in doing so. While substantial sums of federal monies are provided to states to fund improvements in K-12 student achievement and to facilitate college access, direct operating support for both secondary and postsecondary education is the responsibility of the states. The inclusion of federal MOE provisions, some say, represents an infringement on states' longstanding oversight responsibility for their K-12 and public higher education systems.

Enforcement of Maintenance of Effort Provisions

As previously discussed, MOE provisions usually include "waiver" clauses for states in difficult financial situations. However, if federal officials constantly permit waivers, the strength of the provision will be greatly diminished. Both HEOA and ARRA included waivers for the MOE provision.

Under guidance on the ARRA, issued by the U.S. Department of Education, states are eligible for waivers if they fund elementary and secondary education, for the fiscal year under consideration, at the percentage of total state revenues available to the state that is equal to or greater than the percentage provided for that purpose in the preceding fiscal year. In sum, states must maintain the same proportion of their budget that is devoted to K-12 education, regardless of state budget circumstances, to be eligible for waivers. The U.S. secretary of education may grant waivers for "exceptional or uncontrollable circumstances." A number of states have slipped below the fiscal year 2006 funding threshold and have asked for waivers (see Table 1). The department has published a list of states that have requested waivers, and as of April 15, 2010, no waivers had been granted. The level of enforcement by the Obama administration on MOE remains unclear.

Does Maintenance of Effort Influence State Appropriations?

The extent of the federal "incentive" associated with a MOE provision—typically in the form of eligibility for federal monies or matching grants—is a critical factor in determining the effectiveness of MOE. The MOE provision in HEOA carried a very small financial inducement; and as a corollary, the incentive to keep state funding above a prescribed threshold was likewise very small.

Data suggests that the MOE provision in the ARRA influenced a critical mass of state governments in their postsecondary education budget decisions. An analysis of the data from Phase II ARRA applications reveals that MOE, not state formulaic priorities or educational principles, was the overriding factor in many state decisions in determining funding levels for higher education (see Table 2). Nine states reduced their funding for higher education in fiscal year 2010 to within one percent of their fiscal year 2006 federal MOE threshold. Three states—Arizona, Colorado and Kansas—set their higher education budgets at exactly the minimum threshold.

Table 2. State Appropriations for Higher Education in Relation to the "Maintenance of Effort" Threshold Contained in the ARRA State Fiscal Stabilization Fund, Select States, Fiscal Year 2006 and Fiscal Year 2010

	FY 2006	FY 2010	Difference	Percent Difference
Arizona	$ 987,239,500	$987,239,500	—0—	0.00%
California	$8,857,000,000	$8,861,000,000	$4,000,000	0.05%
Colorado	$555,289,004	$555,289,004	—0—	0.00%
District of Columbia	$61,266,493	$62,070,000	$803,507	1.31%
Idaho	$292,953,000	$295,866,100	$2,913,100	0.99%
Illinois	$1,604,852,068	$1,605,024,500	$172,432	0.01%
Kansas	$747,064,138	$747,064,138	—0—	0.00%
Michigan	$1,670,532,950	$1,677,816,822	$ 7,283,872	0.44%
Montana	$131,297,110	$132,762,756	$1,465,646	1.12%
Tennessee	$1,110,882,966	$1,112,842,200	$1,959,234	0.18%
Washington	$1,313,609,000	$1,319,556,000	$5,947,000	0.45%

Source: U.S. Department of Education, ARRA Phase II State Applications

Conclusion

The inclusion of MOE provisions in federal higher education legislation is a policy measure aimed at assuring a compact of shared responsibility between the federal and state governments to enhance college affordability. Evidence based on states' recent higher education budget determinations, as influenced by the MOE provisions contained in the ARRA legislation, indicate that these provisions can serve as an effective federal policy tool in ensuring states' commitment to funding higher education. More specifically, in the case of the ARRA, evidence shows that MOE requirements prevented many states from reducing financial support for public higher education even further. This helped prevent greater student tuition and fee increases at the nation's public colleges and universities.

In the continual effort to support access to affordable and high-quality public postsecondary education, AASCU promotes the inclusion of effective and targeted MOE provisions in all future relevant federal higher education legislation. Providing affordable access to quality public higher education should be a shared responsibility of the federal government, state legislatures and public postsecondary institutions. Including MOE provisions in future federal higher education funding legislation is one important step in ensuring that states uphold their financial responsibilities to students and families, as well as contribute to national economic competitiveness.

Resources

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