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June 8, 2009

Mr. Joel Sideman, Executive Director
Arizona Board of Regents
2020 N. Central Avenue, Suite 230
Phoenix, AZ 85004

Dear Mr. Sideman:

We understand that the universities are contending that the Legislative budget proposal would place the state out of compliance with the requirements to receive Federal Stabilization Funds from the American Recovery and Reinvestment Act. The universities' concerns seemed to be centered on the auxiliary fund transfers and the payment deferrals.

The intent of the Legislative proposal is to draw down all available Federal Stabilization Fund dollars. We are unaware of any provision of the legislation being out of compliance with federal statutory requirements or with subsequent United States Department of Education (USDOE) guidance.

In terms of the payment deferral, the Governor's Office has submitted a Federal Stabilization Fund application to USDOE which calculates the state's funding requirement based on incurred obligations. In their explanatory materials, for example, the Governor's Office has adjusted their expenditure estimates to reflect the year in which the obligation is incurred, not the year in which the payment is actually made. The federal guidance generally affords states with flexibility in terms of how they define their level of spending. The Governor's Office has chosen to submit their application with this type of accrual calculation. We are unaware of any federal provision that would prohibit this approach.

In addition, the universities are suggesting that the auxiliary fund transfers must be included in the calculation of maintenance of effort. As with the payment deferrals, this concept would conflict with the Governor's application. The federal guidance again gives states the flexibility in determining the basis for their maintenance of effort calculation. Federal statute, however, is

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clear in excluding any tuition and fees from this calculation. In their application, the Governor's Office has chosen to define state support as reflecting General Fund spending. They choose to exclude any auxiliary funds from their definition of state support. Again, we are unaware of any federal provision that would prohibit this approach.

Sincerely,



Representative John Kavanagh
Chairman
House Appropriations Committee



Senator Russell K. Pearce
Chairman
Senate Appropriations Committee

RP/JK:ss

xc: Dr. Michael M. Crow, President, Arizona State University
Dr. John D. Haeger, President, Northern Arizona University
Dr. Robert N. Shelton, President, University of Arizona
Richard Stavneak, Director, JLBC
Eileen Klein, Director, OSPB