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Nerissa Bretania Underwood, Ph.D.
Superintendent of Education

August 20, 2010

Honorable, Judith T. Won Pat, Ed. D.
Thirtieth Guam Legislature
253 West O'Brien Dr.
Hagatña, Guahan 96910

Honorable Vicente "ben" C Pangelinan
Chairman
Committee on Appropriations, Taxation, Banking, Insurance, Retirement, and Land
I Mina Trenta Na Liheslaturan Guahan
Suite 101 Quan Building, 324 W Soledad Avenue
Hagatna, Guam 96910

Re: Education Jobs Fund Program

Hafa Adai Speaker Won Pat and Senator Pangelinan!

As you may be aware, the Guam Department of Education (DOE) has been given the opportunity to apply for \$20 million to pay for salaries and benefits for school based personnel. We are diligently working on the application but we must meet a Maintenance of Effort (MOE) threshold. We are currently in the process of calculating the required MOE. In summary the threshold may be measured by one of the following methods:

- Method 1: Comparing FY 2011 Dollar Levels of Support with FY 2009 Levels
- Method 2: Comparing FY 2011 Percentages of Support with FY 2010 Percentages
- Method 3: Comparing FY 2011 Dollar Levels of Support with FY 2006 Levels
- Method 4: Comparing FY 2011 Percentages of Support with FY 2006 Percentages

Methods 3 and 4 are available only if tax collections for calendar year 2009 that are less than tax collections for calendar year 2006. The measures include support to the University of Guam (UOG) and the Guam Community College (GCC). I have attached the guidance provided by US Department of Education that provides more detail related to the measures (see pages 5-7).

As you craft the final budgets for DOE, UOG, and GCC, please keep this requirement in mind. The application is due on September 9, 2010 and the Governor must make assurances that Guam will meet the MOE thru one of these measures and follow-up that assurance with data. I hope that we can work

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 Office of the Speaker
 Judith T. Won Pat, Ed. D.
 Date 8/20/10
 Time 9:29
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together to ensure that we can take advantage of this opportunity. The circulation of an additional \$20 million will not only impact student learning but help to improve the economy of Guam.

Senseramente,



NERISSA BRETANIA UNDERWOOD, Ph.D.
Superintendent of Education *ju*

Attachment

cc: Governor of Guam
GEPB Members
Director, Bureau of Budget and Management Research
University of Guam President
Guam Community College President
Federal Program Administrator
Deputy Superintendent, F&AS

**Initial Guidance
for the Insular Areas
on the
Education Jobs Fund Program**



**U.S. Department of Education
Washington, D.C. 20202**

August 13, 2010

Purpose of the Guidance

The purpose of this guidance is to provide information on the Education Jobs Fund program. The guidance provides the U.S. Department of Education’s interpretation of various statutory provisions and does not impose any requirements beyond those included in the statute and other applicable laws and regulations. In addition, it does not create or confer any rights for or on any person.

The Department will provide additional or updated program guidance as necessary. Please send any comments or questions to EducationJobsFund@ed.gov.

Table of Contents

A. INTRODUCTION	1
A-1. What is the Education Jobs Fund (Ed Jobs) program?	1
A-2. What is the statutory authority for the program?	1
A-3. How has the U.S. Department of Education (Department) determined the amount of funding that each Insular Area may receive under the Ed Jobs program?	1
A-4. What is the period of availability of Ed Jobs funds?	1
B. PROCESS FOR AWARDING FUNDS TO INSULAR AREAS	2
B-1. What is the Department’s process for awarding Ed Jobs funds to the Insular Areas?	2
B-2. What is an approvable Ed Jobs application?.....	2
B-3. Must an Insular Area provide specific education reform assurances in order to receive funds under the Ed Jobs program?	3
B-4. What if a Governor does not submit an approvable Ed Jobs application by the statutory deadline?	3
C. USES OF FUNDS	3
C-1. How may an Insular Area use its Ed Jobs allocation?	3
C-2. In addition to the administrative cost reservation, may a Governor retain any additional portion of its allocation for uses other than saving or creating education jobs?.....	4

C-3. May an Insular Area use Ed Jobs funds to make payments into a “rainy day fund” or for debt reduction?	4
C-4. What categories of expenses may an Insular Area support with Ed Jobs funds?	4
C-5. Which employees may an Insular Area support with Ed Jobs funds?	4
C-6. May an Insular Area use Ed Jobs funds to change previously established employee salary schedules or to reduce the number of furlough days?.....	4
C-7. May an Insular Area use Ed Jobs funds to pay the salaries and benefits of individuals employed by an outside firm who provide contractual school-level services?.....	5
C-8. May an Insular Area use Ed Jobs funds to meet previously unmet pension fund liabilities?	5
C-9. Does the receipt of Ed Jobs funds require Insular Areas to comply with Federal civil rights laws?	5
D. MAINTENANCE OF EFFORT	5
D-1. What are the MOE requirements that apply to the Ed Jobs program?.....	5
D-2. May an Insular Area demonstrate compliance with the Ed Jobs MOE requirements by meeting the elementary and secondary education requirement under one method and the public IHE requirement nder a different method?.....	8
D-3. What MOE information must an Insular Area include in its Ed Jobs application?	8
D-4. If a Governor does not apply on behalf of the Insular Area, must the Insular Area still comply with the MOE requirements to receive Ed Jobs funds?	8
D-5. Do the SFSF MOE requirements continue to apply to an Insular Area receiving Ed Jobs funds?	8
E. ACCOUNTABILITY AND REPORTING.....	8
E-1. Are there rules that govern the amount of Ed Jobs funds that an Insular Area may draw down at any one time?.....	8
E-2. How must an Insular Area that receives Ed Jobs funds track those funds?	9
E-3. Do the reporting requirements under section 1512 of ARRA apply to Ed Jobs funds?.....	9
E-4. Does the Ed Jobs program have reporting requirements in addition to the section 1512 reporting requirements?	9
F. RESOURCES AND INFORMATION	9
F-1. Where may I obtain updated information about the Ed Jobs program?	9
F-2. Where may I obtain answers to specific questions that I may have about the Ed Jobs program? ...	9

APPENDIX A - Authorizing Statute

A. Introduction

A-1. What is the Education Jobs Fund (Ed Jobs) program?

The Ed Jobs program is a new Federal program that provides, in addition to educational support for States, \$50 million in assistance to the Insular Areas to save or create education jobs for the 2010-2011 school year. Jobs funded under this program include those that provide educational and related services for early childhood, elementary, and secondary education.

A-2. What is the statutory authority for the program?

The Ed Jobs program is authorized in Public Law No. 111-226 (Act), which President Obama signed on August 10, 2010. A copy of that portion of the Act authorizing the Ed Jobs program is included as Appendix A.

A-3. How has the U.S. Department of Education (Department) determined the amount of funding that each Insular Area may receive under the Ed Jobs program?

The Department determined the allocation of each Insular Area by formula on the basis of (1) its relative population of individuals who are aged 5 to 24, and (2) its relative total population. This is the same method by which the Department allocated funds to the Insular Areas under the State Fiscal Stabilization Fund (SFSF) program. The amount of funding available to each Insular Area under the program is provided on the program website at <http://www2.ed.gov/programs/educationjobsfund/index.html>.

A-4. What is the period of availability of Ed Jobs funds?

Ed Jobs funds are available for obligations that occur from August 10, 2010 (the date of enactment of the Act) through September 30, 2012. This period includes the additional year of fund availability authorized under the Tydings Amendment (Section 421(b)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1225(b)(1)).

B. Process for Awarding Funds to Insular Areas

B-1. What is the Department's process for awarding Ed Jobs funds to the Insular Areas?

The Department will review applications submitted by Governors on a rolling basis. A Governor may request Ed Jobs funding by submitting an application no later than September 9, 2010. The Department encourages Governors to submit approvable applications as soon as possible so the program funds are available for use early in the 2010-2011 school year. The Department anticipates awarding an Insular Area's total Ed Jobs allocation within two weeks of the Governor's submission of an approvable application. If a Governor does not submit an approvable application by the statutory deadline, the availability of funds will be significantly delayed.

B-2. What is an approvable Ed Jobs application?

An approvable application is one in which the Governor assures, among other things, that:

- The Insular Area will comply with all applicable statutes, regulations, and its approved Ed Jobs application and will use funds under the program in accordance with those statutes and regulations and its approved application;
- The Insular Area will comply with the maintenance-of-effort (MOE) requirements in section 101(10)(A) of the Act and, within 60 days of the date of the Insular Area's grant award, submit to the Department the most current applicable MOE data available;
- The Insular Area will provide, within 60 days of the date of its grant award, a description of how it will use Ed Jobs funds consistent with section 101(5) of the Act;
- The Insular Area will use fiscal control and fund accounting procedures that ensure proper disbursement of and accounting for funds under the Ed Jobs program, including procedures to ensure compliance with Federal cash management requirements;
- The Insular Area will reserve not more than 2 percent of its allocation for the administrative costs of carrying out its responsibilities with respect to Ed Jobs funds and will use all remaining funds to retain existing employees, to recall or rehire former employees, and to hire new employees;

- The Insular Area will not use funds under the Ed Jobs program, directly or indirectly, to (a) establish, restore, or supplement a rainy-day fund; (b) supplant non-Federal funds in a manner that has the effect of establishing, restoring, or supplementing a rainy-day fund; (c) reduce or retire debt obligations incurred by the Insular Area; or (d) supplant non-Federal funds in a manner that has the effect of reducing or retiring debt obligations incurred by the Insular Area; and
- The Insular Area will comply with the reporting requirements (including subrecipient reporting requirements) of section 1512 of the American Recovery and Reinvestment Act of 2009 (ARRA) and such other reporting requirements as the Secretary may establish.

The Ed Jobs application for the Insular Areas is available at <http://www2.ed.gov/programs/educationjobsfund/index.html>.

B-3. Must an Insular Area provide specific education reform assurances in order to receive funds under the Ed Jobs program?

The SFSF program education reform assurances apply to the Ed Jobs program. Once an Insular Area has an approved SFSF phase two application, it is considered to be in compliance with the applicable assurances. An Insular Area does not have to provide in its Ed Jobs application any additional data relative to those assurances.

B-4. What if a Governor does not submit an approvable Ed Jobs application by the statutory deadline?

While the Department anticipates that each Governor will submit a timely approvable application, the statute provides for an alternative distribution method (*see* section 101(8) of the Act). If the Department has to distribute Ed Jobs funds using an alternative method, it will be unable to distribute those funds to the Insular Areas expeditiously and the receipt of funds by another entity or entities in the Insular Area will be substantially delayed.

C. Uses of Funds

C-1. How may an Insular Area use its Ed Jobs allocation?

Each Insular Area may reserve up to 2 percent of its allocation for the costs of administering the program. The Insular Area must use all remaining funds only for compensation and benefits and other expenses, such as support services, necessary to retain existing employees, to recall or rehire former employees, and to hire new employees, in order to provide early childhood, elementary, or secondary educational and related services.

C-2. In addition to the administrative cost reservation, may a Governor retain any additional portion of its allocation for uses other than saving or creating education jobs?

No. Funds not reserved for the costs of administering the Ed Jobs program must be used only for compensation, benefits, and other expenses that are allowable under section 101(5) of the Act.

C-3. May an Insular Area use Ed Jobs funds to make payments into a “rainy day fund” or for debt reduction?

No. An Insular Area may not use program funds, directly or indirectly, to establish, restore, or supplement a rainy day fund, or to supplant non-Federal funds in a manner that has this effect. Furthermore, an Insular Area may not use program funds, directly or indirectly, to reduce or retire debt obligations incurred by the Insular Area or to supplant non-Federal funds in a manner that has this effect.

C-4. What categories of expenses may an Insular Area support with Ed Jobs funds?

For purposes of this program, the phrase “compensation and benefits and other expenses, such as support services” includes, among other things, salaries, performance bonuses, health insurance, retirement benefits, incentives for early retirement, pension fund contributions, tuition reimbursement, student loan repayment assistance, transportation subsidies, and reimbursement for childcare expenses.

C-5. Which employees may an Insular Area support with Ed Jobs funds?

An Insular Area may use the funds to pay the salaries of teachers and other employees who provide school-level educational and related services. In addition to teachers, employees supported with program funds may include, among others, principals, assistant principals, academic coaches, in-service teacher trainers, classroom aides, counselors, librarians, secretaries, social workers, psychologists, interpreters, physical therapists, speech therapists, occupational therapists, information technology personnel, nurses, athletic coaches, security officers, custodians, maintenance workers, bus drivers, and cafeteria workers.

The Insular Areas may not pay the salaries and benefits of administrative employees who are not performing school-level services.

C-6. May an Insular Area use Ed Jobs funds to change previously established employee salary schedules or to reduce the number of furlough days?

Yes. An Insular Area may use Ed Jobs funds, for example, to restore reductions in salaries and benefits and to implement salary increases for the 2010-2011 school year. In addition,

an Insular Area may use the funds for any additional salary and benefits costs associated with the elimination of furlough days that had been scheduled for the 2010-2011 school year. An Insular Area may not use Ed Jobs funds to compensate employees for any period prior to August 10, 2010, the date of enactment of the Act.

C-7. May an Insular Area use Ed Jobs funds to pay the salaries and benefits of individuals employed by an outside firm who provide contractual school-level services?

No. An Insular Area may not use the funds to pay the salaries and benefits of such individuals.

C-8. May an Insular Area use Ed Jobs funds to meet previously unmet pension fund liabilities?

No. An Insular Area may not use Ed Jobs funds to meet pension obligations incurred in prior school years. However, an Insular Area may use its funds for pension obligations accruing on the basis of services that an employee performs during the 2010-2011 school year.

C-9. Does the receipt of Ed Jobs funds require Insular Areas to comply with Federal civil rights laws?

Yes. The receipt of any Federal funds obligates recipients to comply with Federal civil rights laws that prohibit discrimination based on race, color, national origin, sex, disability, and age.

D. Maintenance of Effort

D-1. What are the MOE requirements that apply to the Ed Jobs program?

Under the Ed Jobs program, an Insular Area must maintain fiscal effort for education for fiscal year (FY) 2011 in one of the four ways identified below. Methods 3 and 4 are available only to Insular Areas with tax collections for *calendar year* 2009 that are less than tax collections for *calendar year* 2006.

Under each method, the Insular Area must separately meet the MOE requirements for both elementary and secondary education and for public IHEs.

- **Method 1: Comparing FY 2011 Dollar Levels of Support with FY 2009 Levels**

Elementary and Secondary Education MOE Requirement

For fiscal year 2011, the Insular Area will maintain non-Federal support for elementary and secondary education (*in the aggregate or on the basis of expenditures per pupil*) at not less than the level of such support for fiscal year 2009;

-And -

Public IHE MOE Requirement

For fiscal year 2011, the Insular Area will maintain non-Federal support for public IHEs (not including support for capital projects or for research and development or tuition and fees paid by students) at not less than the level of such support for fiscal year 2009.

- **Method 2: Comparing FY 2011 Percentages of Support with FY 2010 Percentages**

Elementary and Secondary Education MOE Requirement

For fiscal year 2011, the Insular Area will maintain non-Federal support for elementary and secondary education at a percentage of its total non-Federal revenues that is equal to or greater than the percentage for fiscal year 2010;

-And -

Public IHE MOE Requirement

For fiscal year 2011, the Insular Area will maintain non-Federal support for public IHEs (not including support for capital projects or for research and development or tuition and fees paid by students) at a percentage of its total non-Federal revenues that is equal to or greater than the percentage for fiscal year 2010.

- **Method 3: Comparing FY 2011 Dollar Levels of Support with FY 2006 Levels**

This method is available only to Insular Areas with tax collections for calendar year 2009 that are less than tax collections for calendar year 2006.

Elementary and Secondary Education MOE Requirement

For fiscal year 2011, the Insular Area will maintain non-Federal support for elementary and secondary education (*in the aggregate*) at not less than the level of such support for fiscal year 2006;¹

-And -

Public IHE MOE Requirement

For fiscal year 2011, the Insular Area will maintain non-Federal support for public IHEs (not including support for capital projects or for research and development or tuition and fees paid by students) at not less than the level of such support for fiscal year 2006.

- **Method 4: Comparing FY 2011 Percentages of Support with FY 2006 Percentages**

This method is available only to Insular Areas with tax collections for calendar year 2009 that are less than tax collections for calendar year 2006.

Elementary and Secondary Education MOE Requirement

For fiscal year 2011, the Insular Area will maintain non-Federal support for elementary and secondary education at a percentage of its total non-Federal revenues that is equal to or greater than the percentage for fiscal year 2006;

-And -

Public IHE MOE Requirement

For fiscal year 2011, the Insular Area will maintain non-Federal support for public IHEs (not including support for capital projects or for research and development or tuition and fees paid by students) at a percentage of its total non-Federal revenues that is equal to or greater than the percentage for fiscal year 2006.

¹ Under Method 3, an Insular Area may not demonstrate that it is maintaining fiscal effort for elementary and secondary education on the basis of expenditures per pupil.

D-2. May an Insular Area demonstrate compliance with the Ed Jobs MOE requirements by meeting the elementary and secondary education requirement under one method and the public IHE requirement under a different method?

No. An Insular Area must use the same method to demonstrate compliance with both the elementary and secondary education and public IHE requirements. For example, an Insular Area utilizing Method 2 would provide FY 2011 and FY 2010 MOE data on the percentages of its total non-Federal revenues spent on elementary and secondary education and the percentages spent on public IHEs.

D-3. What MOE information must an Insular Area include in its Ed Jobs application?

In the Ed Jobs application, a Governor must assure that the Insular Area will meet the statutory MOE requirements. The Governor also assures that, within 60 days of the date of the Insular Area's grant award, the Insular Area will submit to the Department the most current applicable MOE data available. The Department will be providing technical assistance and further instructions regarding the required MOE submission.

D-4. If a Governor does not apply on behalf of the Insular Area, must the Insular Area still comply with the MOE requirements to receive Ed Jobs funds?

Yes. The MOE requirements apply regardless of whether the applicant is the Governor or an alternate entity.

D-5. Do the SFSF MOE requirements continue to apply to an Insular Area receiving Ed Jobs funds?

Yes. An Insular Area that receives Ed Jobs funds must meet the MOE requirements of both the SFSF and Ed Jobs programs.

E. Accountability and Reporting

E-1. Are there rules that govern the amount of Ed Jobs funds that an Insular Area may draw down at any one time?

Yes. An Insular Area must have an effective system for ensuring that it can draw down Ed Jobs funds from the Department's G5 system. The Insular Area must minimize the time that elapses between a drawdown and the expenditure of funds. (*See* 34 C.F.R. 80.21(b)). The Insular Area must promptly, but at least quarterly, remit to the Department interest earned on

advances. (See 34 C.F.R. 80.21(i)). The Department will take appropriate actions against an Insular Area that fails to comply with this requirement.

The Insular Areas may not draw down any Ed Jobs funds from the Department's G5 system unless it intends to spend the funds to meet immediate expenditure needs (i.e., needs within 3-5 days).

E-2. How must an Insular Area that receives Ed Jobs funds track those funds?

An Insular Area must maintain records that separately track and account for Ed Jobs funds. In accordance with the requirements of section 443(a) of GEPA (20 U.S.C. 1232f (a)), an Insular Area must maintain records that will facilitate an effective audit and demonstrate that the funds were used in compliance with applicable requirements.

E-3. Do the reporting requirements under section 1512 of ARRA apply to Ed Jobs funds?

Yes. Under section 101 of the Act, an Insular Area must fulfill the reporting requirements under section 1512 of ARRA. Specifically, an Insular Area will submit quarterly reports that describe, among other things, how those funds were used. For additional information on the section 1512 reporting requirements, see www2.ed.gov/policy/gen/leg/recovery/section-1512.html.

E-4. Does the Ed Jobs program have reporting requirements in addition to the section 1512 reporting requirements?

Yes. Insular Areas will submit annual reports to the Department for this program that include information on the number of education personnel impacted by the program. The Department will be providing guidance on the annual reporting requirements.

F. Resources and Information

F-1. Where may I obtain updated information about the Ed Jobs program?

The Department will post updated information about the Ed Jobs program on the Department's website at <http://www2.ed.gov/programs/educationjobsfund/index.html>.

F-2. Where may I obtain answers to specific questions that I may have about the Ed Jobs program?

You may submit specific questions about the Ed Jobs program by e-mail to EducationJobsFund@ed.gov or by phone at 202-453-7500. We will respond promptly to your questions.

Appendix A

Public Law No. 111-226 (August 10, 2010)

TITLE I EDUCATION JOBS FUND

EDUCATION JOBS FUNDS

SEC. 101. There are authorized to be appropriated and there are appropriated out of any money in the Treasury not otherwise obligated for necessary expenses for an Education Jobs Fund, \$10,000,000,000: *Provided*, That the amount under this heading shall be administered under the terms and conditions of sections 14001 through 14013 and title XV of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) except as follows:

(1) ALLOCATION OF FUNDS.—

(A) Funds appropriated under this heading shall be available only for allocation by the Secretary of Education (in this heading referred to as the Secretary) in accordance with subsections (a), (b), (d), (e), and (f) of section 14001 of division A of Public Law 111-5 and subparagraph (B) of this paragraph, except that the amount reserved under such subsection (b) shall not exceed \$1,000,000 and such subsection (f) shall be applied by substituting one year for two years.

(B) Prior to allocating funds to States under section 14001(d) of division A of Public Law 111-5, the Secretary shall allocate 0.5 percent to the Secretary of the Interior for schools operated or funded by the Bureau of Indian Affairs on the basis of the schools' respective needs for activities consistent with this heading under such terms and conditions as the Secretary of the Interior may determine.

(2) RESERVATION.—A State that receives an allocation of funds appropriated under this heading may reserve not more than 2 percent for the administrative costs of carrying out its responsibilities with respect to those funds.

(3) AWARDS TO LOCAL EDUCATIONAL AGENCIES.—

(A) Except as specified in paragraph (2), an allocation of funds to a State shall be used only for awards to local educational agencies for the support of elementary and secondary education in accordance with paragraph (5) for the 2010–2011 school year (or, in the case of reallocations made under section 14001(f) of division A of Public Law 111–5, for the 2010–2011 or the 2011–2012 school year).

(B) Funds used to support elementary and secondary education shall be distributed through a State’s primary elementary and secondary funding formulae or based on local educational agencies’ relative shares of funds under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the most recent fiscal year for which data are available.

(C) Subsections (a) and (b) of section 14002 of division A of Public Law 111–5 shall not apply to funds appropriated under this heading.

(4) COMPLIANCE WITH EDUCATION REFORM ASSURANCES.—

For purposes of awarding funds appropriated under this heading, any State that has an approved application for Phase II of the State Fiscal Stabilization Fund that was submitted in accordance with the application notice published in the Federal Register on November 17, 2009 (74 Fed. Reg. 59142) shall be deemed to be in compliance with subsection (b) and paragraphs (2) through (5) of subsection (d) of section 14005 of division A of Public Law 111–5.

(5) REQUIREMENT TO USE FUNDS TO RETAIN OR CREATE EDUCATION JOBS.—Notwithstanding section 14003(a) of division A of Public Law 111–5, funds awarded to local educational agencies under paragraph (3)—

(A) may be used only for compensation and benefits and other expenses, such as support services, necessary to retain existing employees, to recall or rehire former employees, and to hire new employees, in order to provide early childhood, elementary, or secondary educational and related services; and

(B) may not be used for general administrative expenses or for other support services expenditures as those terms were defined by the National Center for Education Statistics in its Common Core of Data as of the date of enactment of this Act.

(6) PROHIBITION ON USE OF FUNDS FOR RAINY-DAY FUNDS OR DEBT RETIREMENT.—A State that receives an allocation may not use such funds, directly or indirectly, to—

(A) establish, restore, or supplement a rainy-day fund;

(B) supplant State funds in a manner that has the effect of establishing, restoring, or supplementing a rainyday fund;

(C) reduce or retire debt obligations incurred by the State; or

(D) supplant State funds in a manner that has the effect of reducing or retiring debt obligations incurred by the State.

(7) DEADLINE FOR AWARD.—The Secretary shall award funds appropriated under this heading not later than 45 days after the date of the enactment of this Act to States that have submitted applications meeting the requirements applicable to funds under this heading. The Secretary shall not require information in applications beyond what is necessary to determine compliance with applicable provisions of law.

(8) ALTERNATE DISTRIBUTION OF FUNDS.—If, within 30 days after the date of the enactment of this Act, a Governor has not submitted an approvable application, the Secretary shall provide for funds allocated to that State to be distributed to another entity or other entities in the State (notwithstanding section 14001(e) of division A of Public Law 111–5) for support of elementary and secondary education, under such terms and conditions as the Secretary may establish, provided that all terms and conditions that apply to funds appropriated under this heading shall apply to such funds distributed to such entity or entities. No distribution shall be made to a State under this paragraph, however, unless the Secretary has determined (on the basis of such information as may be available) that the requirements of clauses (i), (ii), or (iii) of paragraph 10(A) are likely to be met, notwithstanding the lack of an application from the Governor of that State.

(9) LOCAL EDUCATIONAL AGENCY APPLICATION.—Section 442 of the General Education Provisions Act shall not apply to a local educational agency that has previously submitted an application to the State under title XIV of division A of Public Law 111–5. The assurances provided under that application shall continue to apply to funds awarded under this heading.

(10) MAINTENANCE OF EFFORT.—

(A) Except as provided in paragraph (8), the Secretary shall not allocate funds to a State under paragraph (1) unless the Governor of the State provides an assurance to the Secretary that—

(i) for State fiscal year 2011, the State will maintain State support for elementary and secondary education (in the aggregate or on the basis of expenditures per pupil) and 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 not less than the level of such support for each of the two categories, respectively, for State fiscal year 2009;

(ii) for State fiscal year 2011, the State will maintain State support for elementary and secondary education and 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 a percentage of the total revenues available to the State that is equal to or greater than the percentage provided for each of the two categories, respectively, for State fiscal year 2010; or

(iii) in the case of a State in which State tax collections for calendar year 2009 were less than State tax collections for calendar year 2006, for State fiscal year 2011 the State will maintain State support for elementary and secondary education (in the aggregate) and for public institutions of higher education (not including support for capital projects or for research and development or tuition and fees paid by students)—

(I) at not less than the level of such support for each of the two categories, respectively, for State fiscal year 2006; or

(II) at a percentage of the total revenues available to the State that is equal to or greater than the percentage provided for each of the two categories, respectively, for State fiscal year 2006.

(B) Section 14005(d)(1) and subsections (a) through (c) of section 14012 of division A of Public Law 111-5 shall not apply to funds appropriated under this heading.

(11) ADDITIONAL REQUIREMENTS FOR THE STATE OF TEXAS.—
The following requirements shall apply to the State of Texas:

(A) Notwithstanding paragraph (3)(B), funds used to support elementary and secondary education shall be distributed based on local educational agencies' relative shares of funds under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the most recent fiscal year which data are available. Funds distributed pursuant to this paragraph shall be used to supplement and not supplant State formula funding that is distributed on a similar basis to part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.).

(B) The Secretary shall not allocate funds to the State of Texas under paragraph (1) unless the Governor of the State provides an assurance to the Secretary that the State will for fiscal years 2011, 2012, and 2013 maintain State support for elementary and secondary education at a percentage of the total revenues available to the State that is equal to or greater than the percentage provided for such purpose for fiscal year 2011 prior to the enactment of this Act.

(C) Notwithstanding paragraph (8), no distribution shall be made to the State of Texas or local education agencies therein unless the Governor of Texas makes an assurance to the Secretary that the requirements in paragraphs (11)(A) and (11)(B) will be met, notwithstanding the lack of an application from the Governor of Texas.