The following file contains two documents:

- A packet dated February 1, 2010, concerning 2nd round supplementals for Higher Education submitted as part of the Governor's January 27 proposals

- A packet dated January 14, 2010, concerning Higher Education supplemental requests for FY 2009-10 and FY 2008-09.

COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE

SUPPLEMENTAL REQUESTS FOR FY 2009-10
2nd Round January 27 Proposals

DEPARTMENT OF HIGHER EDUCATION

JBC Working Document - Subject to Change
Staff Recommendation Does Not Represent Committee Decision

Prepared By:
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February 1, 2010

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DEPARTMENT OF HIGHER EDUCATION
FY 2009-10 SUPPLEMENTAL RECOMMENDATIONS
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FY 2009-10 SUPPLEMENTAL RECOMMENDATIONS
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Prioritized Supplementals

Supplemental Request #1, January 27 proposal
FY 2009-10 Higher Education Budget Balancing Reduction

	Request	Recommendation
Total	($5,301,997)	($5,301,997)
General Fund	(5,500,000)	(5,500,000)
Reappropriated Funds	(5,301,997)	(5,301,997)
Federal Funds	5,500,000	5,500,000

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforseen contingency.]	**YES**
JBC staff and the Department agree that this request is the result of *new data* about statewide revenues.	

Department Request: In order to address the budget shortfall, the Department requests an additional decrease in General Fund appropriations for fee-for-service contracts, allocations to Local District Junior Colleges (LDJC), and allocations to Area Vocational Schools (AVS). The decreases would be offset by increases in allocations from the federal American Recovery and Reinvestment Act (ARRA). Using more ARRA money in FY 2009-10 decreases the amount of ARRA money available for expenditure in FY 2010-11. Reappropriated funds spending authority for the governing boards would also change in concert with the changes to fee-for-service contracts.

Reducing General Fund for the higher education institutions in FY 2009-10 requires a federal waiver from maintenance of effort requirements contained in the ARRA legislation. Based on guidance from the federal government, OSPB believes this supplemental request meets the waiver criteria. For FY 2010-11 Colorado would not meet the federal waiver criteria, and so any reduction to General Fund for the higher education institutions implemented in FY 2009-10 will need to be restored in FY 2010-11.

The proposed allocation of the reduction by higher education institution is in proportion to General Fund and federal fund appropriations, as adjusted by supplementals approved by the JBC to date, and summarized in the table below.

Adams	$123,546
Mesa	205,417
Metro	416,478
Western	99,773
CSU Sys	1,115,220
Ft. Lewis	83,194
CU	1,497,610
Mines	179,866
UNC	348,308
CCs	1,232,585
LDJCs	124,798
AVS	73,205
TOTAL	$5,500,000

Staff Recommendation: Staff recommends approval of the request. The benefit from the refinancing is temporary, since the General Fund for the higher education institutions needs to be replaced in FY 2010-11 to meet the federal maintenance of effort requirements. But, there will be more policy options available to the Committee for reducing expenditures in FY 2010-11 than there are in the current year, because agencies won't have already spent a significant portion of the appropriation.

While staff recommends approval of the request, if the Committee has options for reducing expenditures in ways that would have on-going impacts in FY 2010-11, it should adopt those options first, before resorting to this temporary refinancing. The original request for refinancing with ARRA funds was of a magnitude ($226.2 million) where there were few alternatives that would be on-going cuts rather than one-time cuts. This second request is of a much smaller magnitude and so there may be other options available to the Committee.

On the other hand, if the Committee feels the remaining viable options to balance the budget in FY 2009-10 are so limited that the Committee is considering reducing the statutory General Fund reserve, then the Committee may want to <u>increase</u> the refinancing of higher education instead. Both reducing the statutory General Fund reserve and refinancing higher education are one-time options. However, the statutory General Fund reserve can be used if there are revenue shortfalls after the legislative session, but further refinancing of higher education requires legislative authorization and federal approval of a waiver from the ARRA maintenance of effort requirement.

There are limits to how much Colorado could reduce Higher Education and K-12 and still meet the federal waiver criteria. However, based on the December Legislative Council Staff revenue forecast, the Governor's proposal for K-12 satisfies those minimum funding requirements by itself. Colorado could theoretically reduce all General Fund for higher education in FY 2009-10 and still meet the waiver criteria. The reductions to higher education's General Fund that could be backfilled with federal funds are limited by the total available federal funds. The JBC has already approved $376.5 million federal funds for higher education in FY 2009-10, leaving $96.5 million available for FY 2010-11. The Governor's proposal would move $5.5 million of the $96.5 million from FY 2010-11 to FY 2009-10. In the extreme, the JBC could decide to move all of the $96.5 million to FY 2009-10, if it desired, but that would leave no federal funds for FY 2010-11.

	FY 09-10	FY 10-11
Current ARRA Allocation		
General Fund	329,456,816	555,289,004
Federal	376,508,243	96,523,038
TOTAL	705,965,059	651,812,042
Proposed Changes		
General Fund	(5,500,000)	0
Federal	5,500,000	(5,500,000)
TOTAL	0	(5,500,000)
Revised ARRA Allocation		
General Fund	323,956,816	555,289,004
Federal	382,008,243	91,023,038
TOTAL	705,965,059	646,312,042

The JBC could increase the federal funds used in FY 2009-10 and decrease the amount used in FY 2010-11 and still maintain the same, or very near the same, total revenue for the higher education institutions in FY 2010-11 as in FY 2009-10, without changing the tuition limits proposed by the Governor. In the Governor's plan, including the $5.5 million change proposed in this supplemental request, the combined General Fund and federal funds for the higher education institutions would drop $59.7 million from FY 2009-10 to FY 2010-11, or 8.5 percent. But, when tuition is included the General Fund, federal funds, and tuition revenues for the governing boards[1] will increase $21.5

[1] The figures in the previous sentence were for the higher education institutions, including the Local District Junior Colleges and Area Vocational Schools. The figures in this sentence are for the governing boards only, excluding the LDJC and AVS, since the General Assembly doesn't appropriate tuition for the LDJC and AVS.

million, or 1.1 percent. In the Governor's plan the impact by governing board is not equal, with a net increase in revenue projected for some governing boards and slight net decreases in revenue projected for others. At figure setting the JBC could change the allocation of reductions, and/or the authorized tuition rate increases, to even out the impact by governing board, if it desires. Using OSPB's tuition assumptions, the JBC could move another $21.5 million federal funds from FY 2010-11 to FY 2009-10, beyond what the Governor has proposed, and still make the combined General Fund, federal funds, and tuition in FY 2010-11 match FY 2009-10 for every governing board. Legislative Council Staff will produce a new tuition forecast in a few weeks that could change the analysis. To the extent that remaining federal funds must be used to backfill reductions to the Department of Education, that would also change the analysis.

If the JBC decides to refinance more of the higher education General Fund in FY 2009-10, staff recommends taking the General Fund reductions from the fee-for-service contracts, and allocating the reductions proportionally, as proposed by the Governor, except that staff does not recommend any further reductions from Metropolitan State College of Denver. The reason for exempting Metro is to preserve the ability of Metro to take advantage of the lower bond rates allowed by the intercept act. The allocation of the reduction is not that important, since the money will be completely backfilled with federal funds, and the General Fund has to be restored in FY 2010-11 to meet the ARRA maintenance of effort requirements.

Supplemental Request #2, January 27 proposal
Cash Fund Transfer - Higher Education Maintenance and Reserve Fund

	Request	Recommendation
Transfer to General Fund	$4,326,389	$2,300,000

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforseen contingency.]	**YES**
JBC staff and the Department agree that this request is the result of *new data* about statewide revenues.	

THIS REQUEST REQUIRES LEGISLATION.

Department Request: The Department requests transferring the projected revenue to the Higher Education Maintenance and Reserve Fund (M&R Fund) to the General Fund to address the budget shortfall. Pursuant to statutory distribution formulas, the M&R Fund receives a portion of federal mineral lease bonus payments and, if revenues are sufficient, a spill-over from the statutory allocation of non-bonus payments. The annual interest of the M&R Fund may be used for controlled maintenance for higher education. The principal may be used for two purposes:

- If federal mineral lease revenues to the Higher Education Federal Mineral Lease Revenues Fund (Revenues Fund) are insufficient to make annual payments on certificates of participation funded from the Revenues Fund, then the principal in the M&R Fund may be transferred to make those payments.

- If General Fund revenues are insufficient to maintain a four percent reserve, the principal in the M&R Fund may be appropriated to offset reductions in General Fund appropriations for the Department of Higher Education.

Using the Legislative Council Staff revenue forecast, OSPB estimates the following will be available in the fund:

Fiscal Year	LCS Revenue Projection	OSPB Interest Estimate	TOTAL
FY 2009-10	$4,241,558	$84,831	$4,326,389
FY 2010-11	$6,195,518	$123,910	$6,319,428
FY 2011-12	$7,491,156	$168,551	$7,659,707

The Department also requests a transfer in FY 2010-11 of $6,319,428.

Staff Recommendation: Staff recommends that the Committee transfer only $2.3 million. OSPB is proposing transferring money that has not yet actually accrued, and may never materialize. The balance in the fund as of January 27 was $2,304,309.

Perhaps what OSPB proposes isn't that different from appropriating from the General Fund based on projections. Also, there is a precedent for transferring projected revenues from this fund. Last year the General Assembly made a transfer from the M&R Fund based on projected revenue, using some creative statutory language that transferred $33.7 million on the last day of the fiscal year, or the balance in the fund if the balance was lower (the actual transfer was $31.2 million). However, customarily the JBC doesn't count on transferring more from cash funds than actually exists in the cash funds. Staff believes the JBC made an exception for the M&R Fund last year because: (1) it was late in the session and there were few alternatives left; (2) the amount was significant; and (3) some large publicly announced projects increased confidence that a significant portion of the additional projected revenue would be forthcoming. This year there are more options still available (such as the refinancing of higher education with ARRA funds described above), and the proposed transfer amount from the M&R Fund is less significant.

OSPB indicates it used the Legislative Council Staff revenue forecast to calculate the request, which is appropriate and consistent with statute. However, staff notes that OSPB's December 2009 revenue forecast projects only $3.0 million accruing to the M&R Fund in FY 2009-10 and $3.2 million in FY 2010-11:

Fiscal Year	OSPB Revenue Projection	OSPB Interest Estimate	TOTAL
FY 2009-10	$2,928,702	$58,574	$2,987,276
FY 2010-11	$3,145,924	$62,918	$3,208,842
FY 2011-12	$4,002,437	$90,055	$4,092,492

Furthermore, the December OSPB forecast notes, "Due to volatility in the projection, and the low amount of funds projected for higher education controlled maintenance, OSPB recommends waiting to plan to spend the funds until FY 2011-12, when the actual balance is built at the end of FY 2010-11." The supplemental request does not explain why OSPB has more confidence in the revenue coming in now than it did in December.

Federal mineral lease revenues, like state severance taxes, have historical varied widely from month to month and year to year, mostly with volatility in energy prices. They are notoriously difficult to project. Predicting bonus payments, which is the subset of total federal mineral lease revenues that would go to the M&R Fund, seems to staff an even more difficult task.

One of the allowable uses of the principal in the M&R Fund is to make payments on lease purchase agreements if money in the Revenues Fund is insufficient. Legislative Council Staff currently projects there won't be any money flowing to the Revenues Fund in the forecast period (through FY 2011-12). In a different supplemental request OSPB has proposed transferring $750,000 out of the Revenues Fund to the General Fund in FY 2009-10 and $7.0 million in FY 2010-11. If the LCS forecast is accurate, and the JBC approves the proposed transfers from the Revenues Fund, there will not be sufficient money in the Revenues Fund to make the lease purchase payments beginning in FY 2011-12. Any reduction to the M&R Fund will increase the General Fund required to make those lease purchase payments beginning in FY 2011-12. The table below summarizes the annual lease payments that are supposed to be paid from federal mineral lease revenues that would revert to a General Fund obligation if federal mineral lease revenues are insufficient.

Year	Fiscal Year		Base Rentals
1	FY	2008-09	$9,996,507
2	FY	2009-10	$15,820,365
3	FY	2010-11	$8,877,550
4	FY	2011-12	$12,446,300
5	FY	2012-13	$18,585,375
6	FY	2013-14	$18,587,975
7	FY	2014-15	$18,587,556
8	FY	2015-16	$18,587,813
9	FY	2016-17	$18,589,938
10	FY	2017-18	$18,587,788
11	FY	2018-19	$18,500,025
12	FY	2019-20	$18,498,125
13	FY	2020-21	$18,498,831
14	FY	2021-22	$18,496,675
15	FY	2022-23	$18,501,863
16	FY	2023-24	$18,497,438
17	FY	2024-25	$18,500,388
18	FY	2025-26	$18,499,925
19	FY	2026-27	$18,502,550
20	FY	2027-28	$0

COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE

SUPPLEMENTAL REQUESTS FOR FY 2009-10 and FY 2008-09

DEPARTMENT OF HIGHER EDUCATION

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Staff Recommendation Does Not Represent Committee Decision

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Prioritized Supplementals

Supplemental Request, Department Priority #1
FY 09-10 Higher Education Budget Balancing General Fund Reduction - Replacement

	Request	Recommendation
Total	($217,939,832)	($217,939,832)
General Fund	(226,153,668)	(226,153,668)
Reappropriated Funds	(217,698,722)	(217,698,722)
Federal Funds	225,912,558	225,912,558

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforseen contingency.]	**YES**
JBC staff and the Department agree that this request is the result of *new data* about statewide revenues.	

Department Request: The Department requests a decrease in General Fund appropriations for stipends, fee-for-service contracts, and allocations to Local District Junior Colleges and Area Vocational Schools to address the budget shortfall. The decreases would be offset by increases in allocations from the federal American Recovery and Reinvestment Act (ARRA). Using more ARRA money in FY 2009-10 decreases the amount of ARRA money available for expenditure in FY 2010-11. Reappropriated funds spending authority for the governing boards would also change in concert with the changes to stipends and fee-for-service contracts.

Reducing General Fund for the higher education institutions in FY 2009-10 requires a federal waiver from maintenance of effort requirements contained in the ARRA legislation. Based on guidance from the federal government, OSPB believes this supplemental request meets the waiver criteria. For FY 2010-11 Colorado would not meet the federal waiver criteria, and so any reduction to General Fund for the higher education institutions implemented in FY 2009-10 will need to be restored in FY 2010-11.

The proposed supplemental would reduce the stipend rate from $2,040 for a full-time, full-year student to $1,320 and take the remainder from the fee-for-service contracts. Reducing the stipend rate preserves enough appropriations from the fee-for-service contracts for institutions to continue to take advantage of the more favorable bond rates available through the Higher Education Intercept Program (S.B. 08-245 Windels/Buescher).

Because the stipend rate for students attending state-operated institutions would decrease, the stipend for students attending participating private institutions would also decrease. The stipend rate for eligible students attending participating private institutions is indexed by statute to 50 percent of the rate for students attending state-operated institutions. The reduction in stipend revenue for the participating private institutions is $321,480 The Governor proposes using $80,370 federal funds from the Government Services Fund of the State Fiscal Stabilization Fund of ARRA to partially backfill the lost revenue for participating private institutions. This is a separate, discretionary portion of the ARRA money that is different from the Education Stabilization Fund money being used to backfill the state-operated institutions.

The allocation of the reduction by higher education institution was based on combined stipends and fee-for-service contracts and calculated in two steps. In August the Governor proposed reducing $81.2 million with half the reduction allocated in proportion to existing General Fund appropriations, and half in proportion to estimated total General Fund and tuition, plus a $10 million adjustment for institutions with the greatest enrollment growth between FY 2005-06 and FY 2008-09. In October the Governor proposed reducing another $145 million with all of it allocated in proportion to General Fund appropriations as adjusted by the August proposal. The net impact by higher education institution is summarized in the table below.

	TOTAL	Stipends	FFS
Adams	$4,748,777	$937,440	$3,811,337
Mesa	7,583,677	3,181,680	4,401,997
Metro	14,831,015	12,204,000	2,627,015
Western	3,915,622	1,031,040	2,884,582
CSU Sys	46,816,954	14,655,600	32,161,354
Ft. Lewis	3,774,400	1,661,040	2,113,360
CU	69,395,280	20,841,840	48,553,440
Mines	8,019,446	1,950,480	6,068,966
UNC	14,312,791	5,560,560	8,752,231
CCs	44,300,760	33,797,520	10,503,240
LDJCs	5,126,385	N.A.	N.A.
AVS	3,007,081	N.A.	N.A.
Privates	321,480	N.A.	N.A.
TOTAL	226,153,668	95,821,200	121,877,522

Staff Recommendation: Staff recommends approval of the request. The benefit from the supplemental is temporary, since the General Fund for the higher education institutions needs to be replaced in FY 2009-10 to meet the federal maintenance of effort requirements. But, delaying the need for reductions until the start of the fiscal year presents more policy options than trying to make mid-year reductions of this magnitude. The allocation of the General Fund reduction by institution is immaterial, since the reduction is backfilled with federal ARRA funds, and so staff sees no reason to deviate from the Governor's proposal.

The allocation of the reduction between stipends and fee-for-service contracts may have symbolic meaning to some, but there will be no impact on the student's share of tuition. If there is an impact on the stipend's usefulness as a recruiting tool, it will be minimal, since most new students (the population most likely influenced by the stipend) start in the Fall or Spring, rather than the summer. The reduction in the stipend rate will reduce the benefit/penalty to governing boards for enrollment changes in FY 2009-10. But, the General Assembly's practice the last few years has been to adjust fee-for-service contracts with adjustments to stipends, so that there is no net change in funding. If the General Assembly decides to change that policy when enrollment adjustments are considered after the February student census, there would be an impact. Reducing the stipend rate in the supplemental does not preclude the JBC from restoring the stipend for FY 2010-11. The Governor has proposed carrying the stipend reduction forward to FY 2010-11, but the General Assembly could decide differently.

**Supplemental Request, Department Priority #2
Academic and Academic Facility Fee Supplemental Spending Authority**

	Request	Recommendation
Cash Funds	10,911,968	10,911,968

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforseen contingency.]	Partial
The Department indicates the request is the result of *data that was not available when the original appropriation was made*. However, the data was available to the governing boards. The problem is that the governing boards didn't report the data, and so it was not available to the General Assembly. According to the Department, "the Department and the governing boards were primarily focused on the state of General Fund revenues and consequently some governing boards placed less emphasis on reviewing individual fee structures."	

Background: The Department requests additional spending authority for academic and academic facility fees for several governing boards. Academic and academic facility fees are a subset of all fees charged by higher education institutions. The majority of fees charged by institutions are related to self-supporting auxiliaries, such as parking, housing, or food services, and are <u>not</u> appropriated by the General Assembly. However, fees related to the academic mission of the institutions <u>are</u> appropriated in the Long Bill. The logic for appropriating academic fees is that these fees could serve as a direct substitute for tuition.

There is no statutory requirement that the General Assembly appropriate academic and academic facility fees. It has been the General Assembly's practice to appropriate these fees since FY 2005-06, when the method of appropriating funds for higher education institutions was adjusted to implement the College Opportunity Fund Program. Prior to FY 2005-06 the General Assembly appropriated a different subset of fees that included fees where the revenue was subject to TABOR, but excluded fees exempt from TABOR because they were related to an enterprise. Most academic fees were appropriated under this old methodology, but a much wider variety of miscellaneous governing board revenues, such as interest, fines, and rentals, were also appropriated. The General Assembly's decision to appropriate only academic and academic facility fees delegated more authority to the governing boards. It limited the General Assembly's appropriation guidance on fees to just those fees necessary to prevent circumnavigation of the General Assembly's tuition appropriations.

Getting the Department and the governing boards to consistently report academic fees as opposed to auxiliary fees has proved difficult. There are legitimate grey areas that require interpretation, e.g. a housing fee that supports a lecture series in the dormitory. But, many of the errors in reporting have not been in areas that are particularly open to interpretation, and the frequency of the inconsistencies in reporting suggest both a lack of guidance/enforcement by CCHE and a lack of attention by the governing boards. In April 2008 the JBC sent a letter to the Legislative Audit Committee suggesting an audit. The same year SJR 08-037 (Tupa, Kerr A.) encouraged CCHE to conduct a comprehensive review of student fees and fee policies, although the focus of the resolution was more on student input and voting authority regarding fees than the distinction between academic fees and auxiliary fees. The JBC letter and SJR 08-037 caused CCHE to review and clarify fee policies.

The Department attributes the supplemental request for additional fee spending authority to the CCHE review and clarification of fee policies. In particular, the Department notes that the new CCHE policy, adopted in October 2008, clarified that information technology fees are academic fees.

The Legislative Audit Committee responded to the request from the JBC and an audit is in progress. However, to ensure the audit is useful and relevant, parts of the audit have been delayed to allow time for governing boards to implement the recent changes to CCHE's fee policies. The first audit findings are likely to be released in June 2010.

Department Request: The Department requests additional cash funds spending authority for the following academic and academic facility fees:

Institution	Fee Type	Revenue	Rate or Increase per Credit Hour*
Existing Fee Previously Unreported			
Adams	Capital	615,987	$20.79
Adams	Technology	798,000	$16.80
Adams	Enrollment/other	(139,989)	N.A.
Western	Field Work	26,000	varies
CU	Technology	4,234,405	$4.48
Mines	Technology	628,488	$2.00
New/Increased Fee			
Metro	Capital	3,000,002	$5.25
Metro	Technology	549,518	$2.31
Metro	Internet	149,891	$0.90
UNC	Technology	448,573	$1.38
UNC	Library	601,093	$2.16
TOTAL		10,911,968	

Staff Recommendation: Staff recommends approval of the request. The fees have already been implemented by the governing boards.

However, staff has concerns that the Department and governing boards continue to have difficulty accurately reporting academic fees to the General Assembly. It's particularly disturbing that some governing boards adopted new or increased academic fees without requesting prior legislative approval.

Prior to CCHE clarifying fee policies there was confusion among the governing boards about whether information technology fees should be reported as academic fees. It is debatable whether this confusion should have existed, but there is no reason for any confusion after the CCHE clarification of fee policies on October 2, 2008. In February of 2009 governing boards submitted estimates of fee revenue for the FY 2009-10 Long Bill. Some governing boards managed to incorporate the new fee policies into the fee revenue estimate, but some governing boards did not.

According to the Department, "the Department and the governing boards were primarily focused on the state of General Fund revenues and consequently some governing boards placed less emphasis on reviewing individual fee structures." This would be understandable, except that the Department and governing boards had five months between the clarification of fee policies and the submission of fee revenue estimates.

It's possible that some governing boards didn't believe that they needed to request spending authority during FY 2009-10 figure setting and had permission from the Department to wait until supplemental time. The Department reports, "During the [CCHE] review [of fees], it was understood that academic and academic facility fee appropriations would be adjusted either through the normal budget process or through a supplemental request in FY09-10." The Department doesn't explain where this understanding that it was ok to wait until supplementals to adjust fee spending authority originated, or the logic behind it.

Not all of the requested spending authority is for information technology fees. Part of the request is for capital, library, and field work fees. Staff doesn't understand why there should have been any confusion about whether these fees needed to be reported as academic fees.

Some governing boards implemented new fees, or increased existing fees, without requesting spending authority. The Department and institutions explain that they couldn't request spending authority in advance because the fee changes were approved by students and/or the governing board after figure setting. This makes no sense to staff. Once the spending authority is set in the Long Bill, the governing boards are supposed to set their budgets based on that spending authority. The governing boards shouldn't have approved the fees if they didn't have spending authority.

While these matters are concerning, the fees have already been implemented. The supplemental request represents an effort by the Department and governing boards to improve reporting to the General Assembly, perhaps attributable to the increased scrutiny of fees from the in-process audit.

An argument could be made that the increases in fees implemented by some governing boards are consistent with direction the General Assembly provided with regard to tuition. The footnote governing tuition generally limited rate increases to 9.0 percent, but included two key exceptions. First, governing boards were authorized to increase the number of credit hours charged to full-time students. Many institutions charge students a per credit hour rate up to a threshold (such as 12 credit hours per semester) after which additional credit hours are free. Raising that threshold doesn't impact all students, but it impacts full-time students, and increases revenue to the institution. Second, the footnote authorized governing boards to backfill reductions in stipends and fee-for-service contracts that exceeded 9.0 percent with additional tuition increases. Every governing board experienced a loss in stipends and fee-for-service contracts that exceeded 9.0 percent. Before approving the tuition footnote, the JBC discussed that these exceptions could allow several of the governing boards to implement resident tuition rate increases in excess of 30 percent. In other words, in approving the tuition footnote the General Assembly was providing considerable latitude to the governing boards to increase tuition to backfill lost General Fund.

The Governor vetoed the tuition footnote and directed the governing boards to limit tuition increases to 9.0 percent. The fee increases implemented by some governing boards somewhat undermined what the Governor was trying to accomplish. But, the net impact to students of the combined tuition and academic fee increases implemented by the governing boards is far below what the General Assembly authorized before the Governor intervened. The General Assembly might have preferred tuition increases to fee increases, but it would be hard to argue that the net impact on charges to students goes against the spirit of the General Assembly's tuition and fee guidance.

The next logical step, beyond the audit, to improve the lackadaisical reporting and unauthorized increasing of academic fees by the Department and governing boards would be to implement fiscal sanctions. The JBC could ask the governing boards to refund fees. This would present practical problems in tracking down some students from the Fall semester, and compliance by the governing boards would be voluntary unless the JBC passed a bill. The JBC could reduce General Fund appropriations, but this wouldn't get the money back to current students. It might protect future students from unauthorized fee increases, if it changed the behavior of the governing boards. For FY 2009-10 and FY 2010-11 the General Assembly would need to redistribute any reduction in General Fund for a governing board to another governing board to continue to meet the maintenance of effort requirements of the federal ARRA legislation.

Staff would consider recommending sanctions of this nature in the future, if fee reporting doesn't improve, but not with this supplemental, primarily because staff interprets the fees as consistent with the latitude the General Assembly delegated to the governing boards regarding tuition authority for FY 2009-10. If the General Assembly had attempted to restrict tuition increases in FY 2009-10, as the Governor did, the staff recommendation would be different.

Supplemental Request, Department Priority #3
Fort Lewis College Nonresident Tuition for Reciprocal Agreement

	Request	Recommendation
Cash Funds	$1,297,000	$1,297,000

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforseen contingency.]	**YES**
JBC staff and the Department agree that this request is the result of *data that was not available when the original appropriation was made* regarding the way Fort Lewis charges tuition to students from New Mexico who are attending through a reciprocal agreement with that state.	

Department Request: The Department requests $1.3 million additional cash funds spending authority to reflect a change in the way the institution accounts for a reciprocal agreement with New Mexico. Prior to FY 2009-10, the institution charged students from New Mexico the resident tuition rate. Following the advice of a financial aid consultant, the Governing Board approved a change for FY 2009-10 to charge students the nonresident tuition rate and then provide a scholarship for the difference. The net impact to the student and the institution is the same either way, but the Governing Board believes there are potential public relations and marketing benefits from providing the scholarship rather than charging the resident tuition rate. This change has no impact on Native American students. Only students admitted through Colorado's reciprocal agreement with New Mexico would see a change in tuition. Nor does this change have any impact on stipend payments. Students admitted through reciprocal agreements are not eligible for stipends.

CCHE has statutory authority to negotiate reciprocal agreements with other states. These reciprocal agreements expand the educational opportunities of Colorado residents and can help Colorado schools to maintain/increase enrollment, potentially resulting in improved economies of scale and greater diversity of course offerings. This particular agreement with New Mexico allows up to 400 student FTE from Colorado to attend New Mexico institutions, and vice versa, at the resident student tuition rate. In FY 2008-09, Fort Lewis admitted 77.6 student FTE through the reciprocal agreement with New Mexico.

Staff Recommendation: Staff recommends approval of the request. The proposed change has no substantive impact on the level of funds available for the institution's operations, or on the cost for students to attend. Staff believes the Department's estimate of the additional cash funds spending authority required to reflect the change in the way Fort Lewis accounts for reciprocal agreements is high. The Department assumed 100 FTE would attend through the reciprocal agreement with New Mexico. The average over the last 5 years has been 79 FTE. However, there is little or no harm in using the Department's conservative estimate of the required change in cash funds spending authority. The college has already set tuition rates for FY 2009-10 and is unlikely to change the rates mid-year. If the FY 2009-10 appropriated tuition base is slightly high, it would not carry forward to FY 2010-11, because the FY 2010-11 tuition spending authority will be based on the Legislative Council Staff revenue forecast, rather than the FY 2009-10 appropriation base.

Supplemental Request, Department Priority #4
FY 09-10 Department of Higher Education Technical Correction

	Request	Recommendation
Total	$0	$0
FTE	6.9	6.9
CF - Indirect Cost Recoveries	0	(31,500)
CF - Private College Approval Fees	0	31,500
RF - Indirect Cost Recoveries	(105,180)	(105,180)
RF - Transfer from Department of Education	105,180	105,180

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforseen contingency.]	YES
JBC staff and the Department agree that this request is the result of a *technical error in calculating the original appropriation*.	

Department Request: The Department requests correcting some technical errors in the Administration line item. First, the Department requests 6.9 FTE, consistent with a letter sent by the JBC in April explaining that there was a technical error in the conference committee report to the Long Bill. The Conference Committee voted to restore $709,895 and 6.9 FTE that had been reduced from the Department Administration by the House, and this is how the report on the Long Bill was explained to the House and Senate when those chambers voted to adopt the report. However, due to a technical error the report included restoration of the money but not the FTE. The April letter from the JBC instructed the Department to maintain staff as if it had the 6.9 FTE, and indicated the JBC would introduce supplemental legislation to correct the technical error.

Second, the Department requests a correction to the letter note indicating the source of reappropriated funds. Currently the letter note states that all the money shall be from indirect cost recoveries, but the letter note should state that of the total $105,180 will come from a transfer from the Department of Education, for the Department's duties in implementing preschool to postsecondary education alignment pursuant to S.B. 08-212.

Staff Recommendation: Staff recommends that the Committee approve the requested changes, plus a similar technical correction to the letternote identifying the source of cash funds (described below). With regard to the FTE, the JBC already approved this change. Regarding the source of reappropriated funds, the letter note was not updated to reflect the annualized impact of

S.B. 08-212. The total for the line item reflects S.B. 08-212, but the letter note was not updated. A similar technical error was made with the letter note for the cash funds. It currently states that all of the money shall be from indirect cost recoveries, but it should indicate that of the total $31,500 shall be from private college and university approval fees pursuant to S.B. 08-167.

Supplemental Request, Department Priority #5
Cumbres and Toltec Scenic Railroad Annual Routine Maintenance

	Request	Recommendation
General Fund	($22,500)	($22,500)

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforseen contingency.]	**YES**
JBC staff and the Department agree that this request is the result of *new data* about statewide revenues.	

Department Request: The Department proposes reducing expenditures for the administration and maintenance of the Cumbres and Toltec Scenic Railroad by 10 percent. Specifically, the Department indicates the Department will reduce materials and labor for the locomotive running gear, which will increase the backlog of deferred maintenance.

Staff Recommendation: Staff recommends approval of the request. The railroad routinely struggles to raise enough revenue for the minimum necessary maintenance to continue operations, and frequently relies on grant funding. This reduction increases the risk the railroad will have an interruption in service due to a lack of maintenance funding, if the railroad can't secure grant funding and experiences a maintenance issue. Although there is risk, staff believes it is appropriate and reasonable for the railroad to share in the statewide budget reductions.

Non-Prioritized Supplemental
Budget Adjustment to Reflect FY 2009-10 Furloughs

	Request	Recommendation
Total	$136,537	$136,537
Cash Funds	95,828	95,828
Reappropriated Funds	26,775	26,775

DEPARTMENT OF HIGHER EDUCATION
FY 2009-10 SUPPLEMENTAL RECOMMENDATIONS
JBC WORKING DOCUMENT - SUBJECT TO CHANGE

	Request	Recommendation
Federal Funds	13,934	13,934

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforseen contingency.]	**YES**
JBC staff and the Department agree that this request is the result of *data that was not available when the original appropriation was made*.	

Department Request: The General Assembly included a statewide personal services reduction equivalent to 1.82 percent of each agencies' appropriation in the FY 2009-10 Long Bill (S.B. 09-259). The net FY 2009-10 impact of the one-time reduction was $26.5 million, of which $16.1 million was General Fund. The executive branch was given the flexibility to develop and implement a plan to meet the mandated reduction. The Governor requests an adjustment to the personal services reductions within the FY 2009-10 Long Bill to reflect the actual staffing actions taken within each agency to achieve a decrease of 1.82 percent.

For the Department of Higher Education, the General Assembly's 1.82 percent reduction saved roughly $132,000. The actual staffing actions implemented by the executive branch result in a net additional reduction of a little over $136,000. A significant portion of the additional savings is attributable to furloughs for staff funded from line items with less than 20 FTE.

Staff Recommendation: Staff recommends approval of the request. The impact by line item is summarized in the table below.

	TOTAL	CF	RF	FF
Short-term Disability	(415)	(278)	(88)	(49)
S.B. 04-257 Amortization Equalization Disbursement	(5,129)	(3,531)	(1,018)	(580)
S.B. 06-235 Supplemental Amortization Equalization Disbursement	(3,205)	(2,207)	(636)	(362)
Department Administration	(25,567)	0	(25,033)	(534)
Division of Private Occupational Schools	(13,952)	(13,952)	0	0
State Historical Society				
Auxiliary Programs	(6,246)	(6,246)	0	0
Statewide Preservation Grant Program	(10,717)	(10,717)	0	0
Society Museum and Preservation Operations	(66,805)	(58,896)	0	(7,909)

	TOTAL	CF	RF	FF
TOTAL	(132,036)	(95,827)	(26,775)	(9,434)

Statewide Common Policy Supplemental Requests

These requests are not prioritized and are not analyzed in this packet. The JBC will act on these items later when it makes decisions regarding common policies.

Department's Portion of Statewide Supplemental Request	Total	General Fund	Cash Funds	Reapprop. Funds	Federal Funds	FTE
Risk Management Reduction of Liability, Property and Workers' Compensation Volatility	($4,485)	$0	($4,139)	($346)	$0	0.0
Risk Management Contract Review and Reduction	(473)	0	(397)	(76)	0	0.0
OIT Personal Services Reduction Initiative	(4,549)	0	(621)	(3,928)		
Mail Equipment Upgrade	(2,226)	0	0	(2,226)	0	0.0
Department's Total Statewide Supplemental Requests	(11,733)	0	(5,157)	(6,576)	0	0.0

Staff Recommendation: The staff recommendation for these requests is pending Committee approval of common policy supplementals. **Staff asks permission to include the corresponding appropriations in the Department's supplemental bill when the Committee approves this common policy supplemental.** If staff believes there is reason to deviate from the common policy, staff will appear before the Committee later to present the relevant analysis.

JBC Staff Initiated
Adjust Allocations of Indirect Cost Recoveries

	Recommendation
General Fund	pending

Staff Recommendation: A number of the supplementals described above impact line items paid from indirect cost recoveries, including #4 FY 09-10 Department of Higher Education Technical Correction, the furlough supplemental, and the statewide supplementals. The net impact if the JBC approves these supplementals would save indirect cost recoveries, but the Department hasn't yet provided the detail for staff to calculate the exact amount. Once the JBC has made decisions on the statewide supplementals, **staff requests permission to apply any savings in indirect cost recoveries to offset General Fund in another line item.**

FY 2008-09 Previously Approved Interim Supplemental
Higher Education "true up"

	Request	Recommendation
Financial Aid, Work Study - GF	($62,409)	($62,409)
Financial Aid, Veterans'/Law Enforcement/POW Tuition Assistance - GF	$62,409	$62,409
Stipends - GF	$8,206,248	$8,206,248
Fee-for-service Contracts - GF	($8,206,248)	($8,206,248)
Total	$0	$0

The request includes corresponding adjustments in the reappropriated funds spending authority for each governing board that are detailed in a table below.

Does JBC staff believe the request is consistent with the emergency supplemental criteria outlined in Section 24-75-111, C.R.S.? Pursuant to statute, the Controller may authorize an over expenditure of the existing budget if the over expenditure meets the following criteria: (1) Is approved in whole or in part by the Joint Budget Committee; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not meeting in regular or special session during which such over expenditure can be legislatively addressed; (3) Is approved by the Office of State Planning and Budgeting (except State, Law, Treasury, Judicial, or Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the over expenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the over expenditure is made as of the date of the over expenditure.	**YES**
New information is available about the population eligible for financial aid and stipends.	

Request: The Department requests adjusting several line items with a net $0 impact to match new data about the population eligible for financial aid and stipends.

Statutes require that out of any money appropriated for financial aid the Department first provide financial assistance to all eligible students through the Veterans'/Law Enforcement/POW Tuition Assistance line item. The cost to fund all eligible students was $62,409 higher than expected in FY 2008-09. To cover the additional cost the Colorado Commission on Higher Education proposes allocating less to work study.

Statutes provide limited authority for the Department, in conjunction with the institutions, to convert spending authority for stipends to fee-for-service contracts, but not the other way around. The Department requests that in cases where the stipend eligible population exceeds the stipend appropriation, the JBC approve an increase in stipend spending authority and a corresponding decrease in the fee-for-service contract. Also, for Fort Lewis College the discrepancy between the appropriation and the stipend-eligible population exceeds the Department's statutory transfer authority, and so the Department requests that the JBC approve an increase in fee-for-service spending authority and a corresponding decrease in stipend spending authority.

	Stipend	**Fee-for-service**
Mesa	$146,775	($146,775)
Metro	$252,574	($252,574)
CSU	$573,721	($573,721)
Fort Lewis	($448,471)	$448,471
Mines	$34,263	($34,263)
Community Colleges	$7,647,386	($7,647,386)
TOTAL	**$8,206,248**	**($8,206,248)**

Staff Recommendation: Staff recommends approval of the request. Staff believes a case could be made that the Department already has sufficient statutory authority to make the requested transfer between the Work Study and Veterans'/Law Enforcement/POW Tuition Assistance line item, but the statutes are not explicit, and there is no harm in a supplemental adjustment. Regarding the transfers between stipends and fee-for-service contracts, the study of the College Opportunity Fund Program that the Department commissioned was critical that making the funding for stipends and fee-for-service contracts a zero-sum game where increases or decreases in enrollment result in no net change to funding runs counter to some of the original stated purposes of the COF. However, the JBC's practice the last few years has been to make end-of-year adjustments. The staff recommendation would continue the current policy until the General Assembly has an opportunity to debate the study of the College Opportunity Fund Program.

	FY 2008-09 Actual	FY 2009-10 Appropriation	Fiscal Year 2009-10 Supplemental Requested Change	Recommended Change	New Total with Recommendation

DEPARTMENT OF HIGHER EDUCATION
Executive Director - D. Rico Munn

Supplemental #1 - FY 09-10 Higher Education Budget Balancing General Fund Reduction - Replacement

	FY 2008-09 Actual	FY 2009-10 Appropriation	Requested Change	Recommended Change	New Total with Recommendation
(4) College Opportunity Fund Program					
(A) Stipends					
Stipends - State					
General Fund	261,617,888	0	(95,821,200)	(95,821,200)	(95,821,200)
Eligible Students (non-add)	*0.0*	*133,085.0*	*0.0*	*0.0*	*133,085.0*
Rate per 30 Credit Hours (non-add)	*$2,040*	*$2,040*	*($720)*	*($720)*	*$1,320*
Stipends - Private	832,401	910,860	(241,110)	(241,110)	669,750
General Fund	832,401	910,860	(321,480)	(321,480)	589,380
Federal Funds	0	0	80,370	80,370	80,370
Eligible Students (non-add)	*816.1*	*893.0*	*0.0*	*0.0*	*893.0*
Rate per 30 Credit Hours (non-add)	*$1,020*	*$1,020*	*($360)*	*($360)*	*$660*
(B) Fee-for-service Contracts					
General Fund	272,563,654	263,801,516	(121,877,522)	(121,877,522)	141,923,994
(5) Governing Boards					
Various Line Items	678,872,258	680,338,670	0	0	680,338,670
College Oppurtunity Fund Program - RF	534,181,544	535,294,916	(217,698,722)	(217,698,722)	317,596,194
Federal Funds	144,690,714	145,043,754	217,698,722	217,698,722	362,742,476
(6) Local District Junior College Grants	15,890,257	15,890,257	0	0	15,890,257

	FY 2008-09 Actual	FY 2009-10 Appropriation	Fiscal Year 2009-10 Supplemental Requested Change	Recommended Change	New Total with Recommendation
General Fund	12,601,934	12,601,934	(5,126,385)	(5,126,385)	7,475,549
Federal Funds	3,288,323	3,288,323	5,126,385	5,126,385	8,414,708
(7) Division of Occupational Education					
Area Vocational School Support	11,202,546	9,736,132	0	0	9,736,132
General Fund	8,505,528	7,392,154	(3,007,081)	(3,007,081)	4,385,073
Federal Funds	2,697,018	2,343,978	3,007,081	3,007,081	5,351,059
Total for Supplemental #1	1,240,979,004	970,677,435	(217,939,832)	(217,939,832)	752,737,603
General Fund	556,121,405	284,706,464	(226,153,668)	(226,153,668)	58,552,796
College Oppurtunity Fund Program - RF	534,181,544	535,294,916	(217,698,722)	(217,698,722)	317,596,194
Federal Funds	150,676,055	150,676,055	225,912,558	225,912,558	376,588,613
Supplemental #2 - Academic and Academic Facility Fee Supplemental Spending Authority					
(5) Governing Boards					
Various Line Items					
Academic Fees - CF	54,794,848	56,781,619	10,911,968	10,911,968	67,693,587
Supplemental #3 - Fort Lewis College Nonresident Tuition for Reciprocal Agreement					
(5) Governing Boards					
Trustees of Fort Lewis College					
Nonresident Tuition - CF	17,247,316	18,284,248	1,297,000	1,297,000	19,581,248

	FY 2008-09 Actual	FY 2009-10 Appropriation	Fiscal Year 2009-10 Supplemental Requested Change	Recommended Change	New Total with Recommendation
Supplemental #4 - FY 09-10 Department of Higher Education Technical Correction					
(2) Colorado Commission on Higher Education					
Administration	2,357,969	2,807,179	0	0	2,807,179
FTE	31.1	24.2	6.9	6.9	31.1
Cash Funds	147,502	159,735	0	0	159,735
Indirect Cost Recoveries	*116,002*	*159,735*	*0*	*(31,500)*	*128,235*
Private College Approval Fees	*31,500*	*0*	*0*	*31,500*	*31,500*
Reappropriated Funds	1,895,016	2,269,848	0	0	2,269,848
Indirect Cost Recoveries	*1,789,836*	*2,269,848*	*(105,180)*	*(105,180)*	*2,164,668*
Department of Education	*105,180*	*0*	*105,180*	*105,180*	*105,180*
Federal Funds	315,451	377,596	0	0	377,596
Supplemental #5 - Cumbres and Toltec Scenic Railroad Annual Routine Maintenance					
(9) State Historical Society					
Cumbres and Toltec Railroad Commission - (	100,000	225,000	(22,500)	(22,500)	202,500
Statewide Common Policy Supplemental - Budget Adjustment to Reflect FY 2009-10 Furloughs					
Various Line Items	N.A.	N.A.	(136,537)	(136,537)	N.A.
Cash Funds			(95,828)	(95,828)	
Reappropriated Funds			(26,775)	(26,775)	
Federal Funds			(13,934)	(13,934)	
Statewide Common Policy Supplementals					

	FY 2008-09 Actual	FY 2009-10 Appropriation	Fiscal Year 2009-10 Supplemental Requested Change	Recommended Change	New Total with Recommendation
(2) Colorado Commission on Higher Education					
Administration	N.A.	N.A.	(11,733)	(11,733)	N.A.
Cash Funds			(5,157)	(5,157)	
Reappropriated Funds			(6,576)	(6,576)	
Department of Higher Education					
Totals for ALL Departmental line items	2,672,424,411	2,790,568,563	(205,901,634)	(205,901,634)	2,584,666,929
FTE	20,891.7	20,948.0	6.9	6.9	20,954.9
General Fund	661,650,598	660,575,732	(226,176,168)	(226,176,168)	434,399,564
Cash Funds	1,259,213,629	1,373,468,595	12,107,983	12,107,983	1,385,576,578
Reappropriated Funds	582,025,661	585,643,182	(217,732,073)	(217,732,073)	367,911,109
Federal Funds	169,534,523	170,881,054	225,898,624	225,898,624	396,779,678

Key:
N.A. = Not Applicable or Not Available