

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Joint Budget Committee
FROM Amanda Bickel, JBC Staff (303) 866-4960
DATE September 9, 2019
SUBJECT Higher Education Financial Aid Statutory Clean-up

On April 17, 2019, the JBC sent a letter to the Governor's Office with its annual requests for information. The second request for the Department of Higher Education reads as follows:

2. Colorado Department of Higher Education, Colorado Commission on Higher Education and Higher Education Special Purpose Programs, Administration -- The Department is requested to review the current financial aid statutes in Articles 3.3 through 3.7 of Title 23 and any other relevant statutory sections, and notify the Joint Budget Committee by September 1, 2019, whether it would like to pursue a statutory clean-up of this section of statute, whether it seeks a more substantive statutory rewrite, or whether it recommends against changes. Depending upon the response, the Joint Budget Committee may consider authorizing a bill draft to enable the Department to work with staff from the Office of Legislative Legal Services and the Joint Budget Committee to develop legislation acceptable to the Department and stakeholder institutions. Statutory clean-up might include, but not be limited to:

- Ensuring that statute and practice are aligned, consistent and clear with respect to the relative responsibilities of the General Assembly, the Commission, and the governing boards.
- Integrating Sections 3.3 through 3.7 with appropriate cross-references.
- Including definitions for different types of aid (need, merit, etc.), clarifying how eligibility for financial aid is assessed and by whom, clarifying, whether financial aid is limited to Colorado residents, etc.
- Incorporating reporting requirements to the Department about institutional policies and practice; and codifying the annual financial aid report currently provided in response to an RFI.

DEPARTMENT RESPONSE: The Department response was submitted September 10, after the deadline, because it belatedly chose to bring this question to the entire Colorado Commission on Higher Education. In the response, the **Department indicated that it recommends against any changes at this time.** It argues as follows:

- The combination of existing statute and Commission policies and guidelines, combined with robust federal rules and regulations, institution-specific guidelines, and Office of the State Auditor audits, are sufficient to shape the financial aid process.
- The Department believes the relevant sections of the Colorado Revised Statutes strike an appropriate balance of outlining authority while also providing flexibility. It believes that alignment, consistency, definitions, and eligibility clarifications are being met the combination of state law, Commission guidelines, etc.

- The Department has considered a “clean up”/revision process but recommends against that action at this time, because it does not want programs to be repealed which are currently options under statute and could conceivably be revitalized, as occurred with the Teacher Loan Forgiveness Program.

JBC staff attended the Commission meeting in which this topic was discussed. In its presentation to the Commission, the Department asked the Commission whether it was interested in making changes to this statute, but its discussion focused on whether substantive changes were desired. The Commission indicated that it did not wish to make substantive changes and was comfortable with the current division of power/responsibilities between the institutions and the Department. This discussion did not address statutory clean-up.

STAFF RECOMMENDATION: JBC staff continues to believe that the financial aid statutes should be revised to more accurately reflect current practice. Staff consulted with the Office of Legislative Legal Services, which agrees.

- Since the Department has clarified with the Commission that the Commission does **not** wish to substantively change management of financial aid, **any revision should be strictly clean-up and ensuring statute aligns with practice.**
- This bill could potentially be addressed by the statutory revision committee, but whether the JBC or statutory revision committee is most appropriate will be easiest to assess once a bill has been drafted. From a workflow process, *it would be helpful if a member of the JBC requested a bill draft with a working title that concerns non-substantive changes to align state financial aid statutes with current practice and authorizes JBC staff and OLLS staff to work with the Department and institutions on content.*
- Staff hopes that, given sufficient time for review and consideration, the Department and the institutions will be sufficiently comfortable with a draft that the General Assembly will be able to move forward.
- Staff believes that it is difficult for the General Assembly to understand the programs it is funding or to determine when or how to modify those programs when statute and practice differ substantially. OLLS staff likewise note that they are more likely to make changes with unintended consequences when statute is so murky.

GENERAL BACKGROUND ON FINANCIAL AID PRACTICE: As the financial aid system is currently operated:

- The General Assembly appropriates funds to several financial aid line items with broad titles: “Need Based Grants,” “Merit Based Grants,” and “Work Study” under the division heading “Colorado Commission on Higher Education Financial Aid.” Financial aid funding comprises close to 20 percent of all General Fund appropriations for higher education (\$220.0 million), and most of this is allocated by the Commission.
- Based on Long Bill appropriations, for FY 2019-20, the Commission allocated funds to institutions for need-based aid for undergraduate students, for graduate students, for work-study, and for merit based grants. This includes allocations for students attending private institutions (both non-profit and for-profit). See the attachment for detail.
- Through the 2000’s, the State established financial aid policy; however, based on changes included in S.B. 10-003 governing boards increased their authority over how they use state financial aid funds within their institution.

- For need-based aid (the vast majority of funds), the institutions largely follow federal guidelines for purposes of determining whether a student qualifies on the basis of need, *i.e.*, whether the student has an “expected family contribution” that exceeds the institution’s “cost of attendance” based on completion of the Free Application for Federal Student Aid (FAFSA). However, because the institution, rather than the State, establishes their financial aid policy, they may distribute funds to middle income students with need and not focus solely on the lowest income students, if they so choose.
- The Colorado Commission on Higher Education: (1) Determines the allocation of funds among public and private institutions, including the allocation of funds for financial aid for graduate programs. (2) Establishes guidelines for student budgets (*i.e.*, assumptions for room and board and similar costs; institutions may deviate from these if supported by data) and other policies related to documentation and program management; (3) Collects information from the institutions on how they use the financial aid funds. This data is maintained in the Department’s financial aid database and used for various required reporting. (4) Establishes audit guidelines used by the Office of the State Auditor (OSA) to audit financial aid programs every two years.

As reflected in the Department’s response, both the Department and the institutions seem reasonably satisfied with the current division of power, *i.e.*, the Department divvies up the money among institutions. The institutions divvy up the funds among students who meet certain basic qualifications, e.g., they have “need” as defined under federal rules. The OSA audits to ensure basic compliance. JBC staff, too, is supportive of this basic structure. Staff simply does not believe it is adequately outlined in statute. Much of the existing statutory structure dates to the 1970s, and the changes adopted in S.B. 10-003, devolving power over financial aid policy to the institutions, did not include a comprehensive statutory re-write to clarify what policy powers were retained by CCHE or the General Assembly.

EXAMPLES OF STATUTORY CLEAN-UP

CONFLICTS/ALIGNMENT/DEFINITIONS:

- Statutory provisions related to funding are primarily found in **Section 23-3.3-101 et. seq.** This is the portion of statute that the Department uses when explaining the statutory basis for most of its financial aid programs (Financial Aid Policy, Section VI). Article 3.3 includes virtually no content.

Section 23-3.3-501, C.R.S. simply states: “The commission shall use a portion of any moneys remaining after meeting the requirements [of other parts] of this article to provide other programs of financial assistance based upon financial need, merit, talent, or other criteria established by the commission for students enrolled at institutions.”

However, Section 23-3.3-102 (3) ALSO states that “each state institution shall administer a financial assistance program according to policies and procedures established by the governing board of the institution...”.

This raises the question of whether the Commission has authority to establish any guidelines related to the funding it distributes to public higher education institutions.

The Department's guidelines and policies indicate that state financial aid funding is only for students who are Colorado residents, but it is not clear whether it has the necessary statutory authority to limit the state funds it distributes in this way. Statute likewise includes no definition of Need Based Grant or Merit Based Grant, and the Department does not have clear authority to define these terms under current state statute.

- The Department's Financial Aid Official Guidelines refer to two need based assistance programs, the Colorado Student Grant and the Colorado Graduate Grant. These programs support financial aid for undergraduate students and graduate students at both public and private institutions, primarily based on need. The Department also allocates \$5.0 million in state Merit Based Grant funds appropriated by the General Assembly.
 - The Department's Financial Aid Policy specifies that the authority for the above programs is Section 23-3.3-501, authorizing the Commission to provide "other programs of financial assistance".
 - There is more extensive statutory language at 23-3.5-101 et. seq. establishing the Colorado Student Incentive Grant Program, a need-based financial aid program limited to resident undergraduate students, and at Section 23-3.7-101 et. seq., establishing the Tuition Assistance Grant Program to provide financial assistance to students attending nonpublic institutions of higher education. However, the Department indicates that its financial aid programs do not rely on these statutory provisions.
 - Last year, the Department asked the General Assembly to authorize a new program in statute to provide emergency retention grants for students. When the General Assembly did not pass a related bill, the Department did not create the program. Arguably, the Commission could have created such a program under Section 23-3.3-501--but it would not then have had any authority over how the funds were used by the institutions.
- Staff recognizes that, for need-based aid programs, the Department's intent is largely to align with federal rules. However, the relationship between the federal and state programs is not outlined in statute, and in some cases state and federal policy do not align, e.g., with respect to audit schedules and, since last year, eligibility for some students who are not eligible for federal aid.

ARCHAIC DESCRIPTION OF FUNDING PROCESS:

Section 23-3.3-102 (7), C.R.S., describes a process for requesting and approving financial aid that does not align with current practice.

23-3.3-102 (7). Each annual budget request submitted by the commission shall provide information on the proposed distribution of the moneys among the programs developed under this article. Subsequent to final appropriation, the commission shall provide to the joint budget committee an allocation proposal specifically identifying the distributions among programs for the coming year. Expenditures in any program shall not exceed the allocation for that program by more than ten percent of such allocation, and the total appropriation for all student aid programs shall not be exceeded.

Under modern practice:

- The Commission submits a budget request for appropriations to certain line items—as opposed to a “proposed distribution of moneys among programs”.
- It submits an annual report on financial aid actually distributed after a year has closed out. It has also responded to staff questions about distribution of current-year funds, but staff is not aware of an “allocation proposal” submitted subsequent to final appropriation.
- The Department appears to use this authority to transfer appropriations among certain financial aid line items up to a certain cap, but the “allocation” language differs from standard language. This transfer authority also does not incorporate transfers to/from COF private stipends, which are essentially financial aid, but does incorporate transfers to/from the Colorado Opportunity Scholarship Initiative program, which probably should not be included, since it does not operate under the authority of the Commission.

POSSIBLY OBSOLETE SECTIONS:

Sections 23-3.5-101 et. seq. and 23-3.7-101 et. seq. establish specific programs under statute, but the Department indicates it is not relying on these statutory provisions when distributing state-funded appropriations.

Section 23-3.3-102 (3.5) requires institutions to adopt policies to ensure that any in state student enrolled in an approved preparation program to become a school principal may qualify for financial assistance. The Department does not know whether or how institutions have embedded this requirement in their financial aid policies. The provision may be obsolete.

Section 23-3.3-701 concerns a Colorado Nursing Scholarship Program, which is not currently funded. The Department’s letter indicates that it does not wish to eliminate this, in the hope that the program might be refreshed or revisited by legislators in the future. If the Department hopes that the General Assembly will fund it in the future and legislators believe this is likely, this component could remain, though, in general, staff would only recommend this if members expect the program to be funded within the foreseeable future.

FY 2019-20 Commission Allocation of Financial Aid Funding
 (CCHE Agenda Item IV, June 6, 2019)

	UG Need	Grad Need	Work-Study	Merit	CTE	Total
Public Four-Year Institutions						
Adams State University	\$2,259,818		\$451,522	\$60,687		\$2,772,028
Colorado Mesa University	\$8,358,127	\$6,261	\$981,736	\$268,823	\$4,648	\$9,619,595
Colorado School of Mines	\$1,618,343	\$451,202	\$509,691	\$84,204		\$2,663,440
Colorado State University	\$13,125,938	\$1,531,028	\$2,313,550	\$581,186		\$17,551,702
Colorado State University - Pueblo	\$4,579,037	\$62,655	\$869,832	\$128,010		\$5,639,535
Fort Lewis College	\$1,497,559		\$353,591	\$54,066		\$1,905,216
Metropolitan State University of Denver	\$20,913,437	\$42,945	\$2,708,394	\$609,680		\$24,274,456
University of Colorado Boulder	\$10,546,316	\$750,347	\$2,005,880	\$454,058		\$13,756,601
University of Colorado Colorado Springs	\$8,941,951	\$239,475	\$883,751	\$293,560		\$10,358,737
University of Colorado Denver	\$11,286,802	\$6,495,551	\$1,105,773	\$338,779		\$19,226,904
University of Northern Colorado	\$7,280,013	\$287,811	\$1,282,609	\$271,882		\$9,122,316
Western State Colorado University	\$1,310,195	\$6,526	\$281,161	\$49,431		\$1,647,313
Public Two-Year Institutions						
Arapahoe Community College	\$3,004,148		\$457,439	\$102,904	\$35,497	\$3,599,988
Colorado Northwestern Community College	\$476,475		\$88,647	\$18,514	\$2,536	\$586,171
Community College of Aurora	\$3,851,839		\$403,345	\$113,041	\$15,794	\$4,384,019
Community College of Denver	\$5,340,274		\$939,170	\$153,339	\$14,843	\$6,447,626
Front Range Community College	\$8,960,400		\$1,205,947	\$288,892	\$88,056	\$10,543,295
Lamar Community College	\$534,912		\$129,860	\$16,644	\$1,849	\$683,265
Morgan Community College	\$657,553		\$143,531	\$17,350	\$7,395	\$825,830
Northeastern Junior College	\$866,153		\$200,387	\$35,252	\$7,712	\$1,109,504
Otero Junior College	\$1,026,685		\$230,328	\$30,869	\$9,138	\$1,297,020
Pikes Peak Community College	\$9,993,071		\$1,161,612	\$288,367	\$50,657	\$11,493,707
Pueblo Community College	\$4,756,617		\$824,538	\$121,397	\$68,564	\$5,771,116
Red Rocks Community College	\$3,816,273	\$49,609	\$477,356	\$117,150	\$59,109	\$4,519,498
Trinidad State Junior College	\$1,172,874		\$372,722	\$30,526	\$8,927	\$1,585,049
Local Districts						
Aims Community College	\$3,621,278		\$405,166	\$112,196	\$20,865	\$4,159,505
Colorado Mountain College	\$2,203,668		\$189,928	\$67,560	\$16,639	\$2,477,795
						\$0
Non-Profit Private Institutions						
						\$0
Colorado Christian University	\$2,167,621	\$6,430	\$250,214	\$74,226		\$2,498,492
Colorado College	\$158,879		\$157,050	\$8,946		\$324,875
Naropa University	\$126,850		\$33,026	\$1,766		\$161,642
Regis University	\$2,410,209	\$1,526,999	\$541,133	\$88,971		\$4,567,312
University of Denver	\$1,460,713	\$181,638	\$539,077	\$64,135		\$2,245,563
Technical Colleges						
Technical College of the Rockies	\$151,048		\$5,862	\$4,484	\$9,719	\$171,114
Emily Griffith Technical College	\$717,977		\$60,895	\$18,494	\$12,096	\$809,462
Pickens Technical College	\$542,250		\$30,224	\$16,462	\$15,953	\$604,888
	\$149,735,304					
Private For Profit Institutions						
Colorado Technical Univ	\$490,594					
ConCorde Career Inst	\$278,283					
Devry (Denver Technical)	\$388,326					
Intellitec Coll--CS	\$158,651					
Intellitec Coll--GJ	\$97,272					
International Bty	\$71,825					
IBMC	\$80,284					
Rocky Mtn Col A&D	\$104,384		\$117,119			
	\$1,669,617					
	\$151,404,920	\$11,638,477	\$22,712,068	\$4,985,850	\$449,997	\$189,404,577