

**Guidance on  
Maintenance of Effort Requirements and Waiver  
Requests under the Elementary and Secondary School  
Emergency Relief (ESSER) Fund and the Governor’s  
Emergency Education Relief (GEER) Fund**



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## **U.S. Department of Education**

### **Guidance on Maintenance of Effort Requirements and Waiver Requests**

The purpose of this guidance is to provide information on the maintenance of effort (MOE) requirements under the Elementary and Secondary School Emergency Relief (ESSER) Fund and the Governor’s Emergency Education Relief (GEER) Fund. This guidance document includes the following:

- A chart outlining the main similarities and differences between the MOE requirements in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act), and the American Rescue Plan Act of 2021 (ARP Act).
- Frequently asked questions about the MOE requirements and the process for States to request an MOE waiver under section 2004(a) of the ARP Act. The Department’s approach to MOE waiver requests will be rooted in consideration of the impact on students. The purpose of ARP ESSER, ESSER I, ESSER II, GEER I, GEER II, and EANS funds is to expand resources for K-12 and postsecondary schools and students, not to replace existing State commitments to K-12 and postsecondary education.
- An MOE worksheet describing how to calculate MOE under the CARES Act, the CRRSA Act, and the ARP Act.
- An MOE data submission form that each State must use to report MOE data for the CARES Act, the CRRSA Act, and the ARP Act.
- An MOE waiver request form that a State must use when requesting a waiver of the MOE requirements.

In the near future, the Department will also release separate guidance on the new State and local educational agency (LEA) maintenance of equity requirements in section 2004(b) and (c) of the ARP Act.

## Comparing the Maintenance of Effort Requirements in the CARES Act, the CRRSA Act, and the ARP Act<sup>1</sup>

This chart outlines the main similarities and differences between the maintenance of effort (MOE) requirements in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act), and the American Rescue Plan Act of 2021 (ARP Act). The MOE requirements for the CRRSA Act and the ARP Act are included in the same column because the requirements under the two statutes are the same, except that the ARP Act extends the CRRSA Act requirements for an additional fiscal year.

| Topic                          | CARES Act ( <a href="#">Section 18008</a> )   | CRRSA Act (Division M, <a href="#">Section 317</a> ) & ARP Act ( <a href="#">Section 2004(a)</a> )  |
|--------------------------------|---|---|
| <b>Programs Subject to MOE</b> | Elementary and Secondary School Emergency Relief Fund (ESSER), Governor’s Emergency Education Relief Fund (GEER).   | <u>CRRSA Act</u> : ESSER II, GEER II, Emergency Assistance to Non-Public Schools (EANS) program.<br><br><u>ARP Act</u> : ARP ESSER. The requirements do not apply to ARP EANS.  |
| <b>MOE Requirements</b>        | A State that receives ESSER or GEER funds under the CARES Act must: <ol style="list-style-type: none"> <li>1. Maintain State support for elementary and secondary education in each of <i>fiscal years (FYs) 2020 and 2021</i> at least at the level of such support that is the average of State support for elementary and secondary education for FYs 2017, 2018, 2019; and</li> <li>2. Maintain State support for higher education in each of <i>FYs 2020 and 2021</i> at least at the level of such support that is the average of State support for higher education for FYs 2017, 2018, and 2019.</li> </ol> | <u>CRRSA Act</u> : A State that receives ESSER II, GEER II, or EANS funds under the CRRSA Act must: <ol style="list-style-type: none"> <li>1. Maintain State support for elementary and secondary education in <i>FY 2022</i> at least at the proportional level of the State’s support for elementary and secondary education <i>relative to the State’s overall spending</i>, averaged over FYs 2017, 2018, and 2019; and</li> <li>2. Maintain State support for higher education in <i>FY 2022</i> at least at the proportional level of the State’s support for higher education <i>relative to the State’s overall spending</i>, averaged over FYs 2017, 2018, and 2019.</li> </ol><br><u>ARP Act</u> : A State that receives ARP ESSER funds must meet this MOE requirement in each of <i>FYs 2022 and 2023</i> . |
| <b>MOE Baseline</b>            | The CARES Act has two MOE baselines:  | The CRRSA Act and ARP Act have the  |

<sup>1</sup> Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to grantees regarding existing requirements under the law or agency policies.

| Topic                     | CARES Act ( <a href="#">Section 18008</a> )   | CRRSA Act (Division M, <a href="#">Section 317</a> ) & ARP Act ( <a href="#">Section 2004(a)</a> )   |
|---------------------------|---|--|
| Level                     | <ol style="list-style-type: none"> <li>1. Elementary and secondary education baseline, which averages the <i>dollar amount of State support for elementary and secondary education</i> over the three baseline years.</li> <li>2. Higher education baseline, which averages the <i>dollar amount of State support for higher education</i> over the three baseline years.</li> </ol>  | <p>same two MOE baselines:</p> <ol style="list-style-type: none"> <li>1. Elementary and secondary education baseline, which averages the <i>percentages of total State spending that are used to support elementary and secondary education</i> over the three baseline years.</li> <li>2. Higher education baseline, which averages the <i>percentages of total State spending that are used to support higher education</i> over the three baseline years.</li> </ol>        |
| Baseline years            | FYs 2017, 2018, and 2019.   | FYs 2017, 2018, and 2019.  |
| MOE years                 | FY 2020 and FY 2021.  | <p><u>CRRSA Act</u>: FY 2022.</p> <p><u>ARP Act</u>: FY 2022 and FY 2023.</p>  |
| How to Demonstrate MOE    | <ol style="list-style-type: none"> <li>1. Compare the dollar amount of State support for elementary and secondary education for FY 2020 and separately for FY 2021 to the baseline level on either an aggregate or per student basis; and</li> <li>2. Compare the dollar amount of State support for higher education for FY 2020 and separately for FY 2021 to the baseline level on either an aggregate or full-time-equivalent (FTE) basis.</li> </ol> | <p><u>CRRSA Act</u>:</p> <ol style="list-style-type: none"> <li>1. Compare the percentage of total State spending used to support elementary and secondary education in FY 2022 to the baseline percentage; and</li> <li>2. Compare the percentage of total State spending used to support higher education in FY 2022 to the baseline percentage.</li> </ol> <p><u>ARP Act</u>: Make these comparisons for both FY 2022 and FY 2023 relative to the baseline percentages.</p> |
| State Sources of MOE data | <p><b>State support data:</b> A State may use either actual State expenditure data or data representing final appropriated or allocated amounts for both the baseline levels and the applicable comparison levels (FY 2020 and FY 2021).</p> <p><b>State overall spending data:</b> Not relevant for CARES Act MOE</p>  | <p><b>State support data:</b> A State may use either actual State expenditure data or data representing final appropriated or allocated amounts for both the baseline levels and the comparison levels (FY 2022 for CRRSA Act, and FYs 2022 and 2023 for ARP Act).</p> <p><b>State overall spending data:</b> A State must</p>   |

| Topic                            | CARES Act ( <a href="#">Section 18008</a> )  | CRRSA Act (Division M, <a href="#">Section 317</a> ) & ARP Act ( <a href="#">Section 2004(a)</a> )   |
|----------------------------------|--|--|
|                                  | determination.   | use data on <i>actual</i> State expenditures to demonstrate overall spending, consistent with the statutory reference to “overall State spending.” A State <u>may not</u> use final appropriated or allocated amounts that differ from actual State expenditures to demonstrate compliance with the MOE requirements.  |
| <b>MOE Data submission dates</b> | <p><b>Baseline data:</b> Each State submitted baseline data by September 1, 2020.</p> <p><b>FY 2020 data:</b> Each State submitted FY 2020 data by December 31, 2020. Baseline data and FY 2020 data may be updated by a State on or before May 17, 2021.</p> <p><b>FY 2021 data:</b> The Department intends to collect FY 2021 data by December 30, 2021.</p> | <p><b>Baseline data:</b> Each State must submit baseline data by May 17, 2021.</p> <p><b>FY 2022 data:</b> Each State must submit FY 2022 interim data on appropriated or allocated amounts for State support for elementary and secondary education, State support for higher education, and overall State spending by December 30, 2021. Each State must submit final expenditure data for FY 2022 overall State spending in spring 2023.</p> <p><b>FY 2023 data:</b> Each State must submit FY 2023 interim data on appropriated or allocated amounts for State support for elementary and secondary education, State support for higher education, and overall State spending by December 30, 2022. Each State must submit final expenditure data for FY 2023 overall State spending in spring 2024.</p> |

## 1. What is meant by the term “fiscal year” in determining MOE?

For purposes of determining MOE, a State may use either the applicable Federal fiscal year or the applicable State fiscal year. Fiscal years are denoted by the calendar year in which they end (e.g., the fiscal year that ends June 30, 2021 would be deemed fiscal year 2021). See chart below for an example of how State and Federal fiscal years align with particular school years.

|         | Federal fiscal year                  | State fiscal year (example)  | School Year |
|---------|--------------------------------------|------------------------------|-------------|
| FY 2020 | October 1, 2019 - September 30, 2020 | July 1, 2019 - June 30, 2020 | 2019-2020   |
| FY 2021 | October 1, 2020 - September 30, 2021 | July 1, 2020 - June 30, 2021 | 2020-2021   |
| FY 2022 | October 2, 2021 - September 30, 2022 | July 1, 2021 - June 30, 2022 | 2021-2022   |
| FY 2023 | October 2, 2022 - September 30, 2023 | July 1, 2022 - June 30, 2023 | 2022-2023   |

## 2. How does a State quantify the amount of its support for elementary and secondary education?

The CARES Act, CRRSA Act, and ARP Act do not specify how a State must determine its “support for elementary and secondary education” for purposes of the MOE requirements, and the Department is not defining this term through regulation. Rather, in recognition of the variations in education finance data and the lack of a statutory definition, the Department is providing States with principles that provide flexibility in quantifying the amount of that support.

In quantifying its support for elementary and secondary education, the data used by a State to determine the level of support must—

- Include funds provided through the primary funding mechanisms through which a State provides support for elementary and secondary education.
- Be consistent from year to year.
- Be based on adequate documentation.

In quantifying support for elementary and secondary education, a State may choose to establish its level of support—

- Solely on the basis of the amount of funds provided through its primary elementary and secondary education funding formula(e).
- By also including categorical and other support that is not provided through the primary funding formula(e). For example, a State may include data such as funding under State auspices for non-appropriated support (e.g., tobacco settlement funds and lotteries) specifically set aside for current expenditures for elementary and secondary education and interest or earnings received from State endowments pledged to elementary and secondary education.
- On the basis of data that it provides for other purposes, such as data that it includes as “Revenue from State Sources” in the annual National Public Education Finance Survey conducted by the National Center for Education Statistics (NCES).

In quantifying support for elementary and secondary education, the data used by a State to determine the level of support may *not*—

- Include support from private donors, such as charitable contributions that individuals make to elementary and secondary education.
- Include Federal funds.

### 3. How does a State quantify the amount of its support for higher education?

Although the CARES Act, CRRSA Act, and ARP Act exclude certain data from MOE determinations, they do not specify how a State must determine its “support for higher education.” Rather, in recognition of the variations in the types of support for higher education and the lack of a statutory definition, the Department is providing States with principles that provide flexibility in quantifying the amount of that support.

In quantifying support for higher education, the data used by a State to determine the level of support must—

- Include only *State* support for higher education. In some States, local governments may provide support for community colleges or other institutions of higher education (IHEs). Local government contributions are not considered State support.
- Include funds provided by the principal funding mechanisms through which a State provides support to IHEs. For example, the data would include State appropriations for operational support for institutions of higher education. A State must consider unrestricted State funding for IHEs to be State support for such institutions even if those institutions choose to use a portion of that funding for financial assistance to students. This financial assistance is not considered to be tuition and fees paid by students or direct State support to students.
- Include State need-based financial aid.
- Be consistent from year to year.
- Be based on adequate documentation that substantiates the levels of support that it has used in making MOE calculations.

In quantifying support for higher education, the data used by a State to determine the level of support may—

- Include data in addition to that provided in the appropriations enacted by the State legislature for IHEs. For example, a State may include data such as funding under State auspices for non-appropriated support (e.g., tobacco settlement funds and lotteries) specifically set aside for higher education and interest or earnings received from State endowments pledged to IHEs.
- Include State appropriations to IHEs for financial assistance programs – both need-based and merit-based) to defray the costs of tuition and fees paid by students (when the appropriated funds flow directly to the IHEs). The fact that the funds represent student financial aid for other purposes does not preclude such funds from consideration as State support for higher education in the CARES Act, CRRSA Act, or ARP Act programs.
- Include State appropriations for dual enrollment or early college programs.

In quantifying support for higher education, the data used by a State to determine the level of support may *not* include—

- Support for capital projects, research and development, or tuition and fees paid by students. If a State provides unrestricted State funding to IHEs and does not make separate appropriations for capital expenditures or research and development, the State must estimate the amount of capital expenditures and research and development expenditures to be excluded from the unrestricted funding.
- Support from private donors, such as charitable contributions that individuals make to IHEs. This also includes corporate contributions for IHEs, such as payments that a corporation makes for stadium-naming rights.
- Federal funds, including Higher Education Emergency Relief Funds.

#### **4. How does a State quantify the amount of “overall spending” for a given fiscal year?**

For CRRSA Act and ARP Act MOE requirements, a State must quantify the amount of its overall spending during the baseline years (i.e., FYs 2017, 2018, and 2019) as well as during the year(s) in which the State must maintain effort (i.e., FY 2022 for the CRRSA Act and FYs 2022 and 2023 for the ARP Act). A State’s overall spending in a given year includes not only a State’s actual expenditures on elementary, secondary, and higher education, but also expenditures on all other activities and services that it supports with State funds (e.g., public welfare, public health, public safety, and transportation). A State’s overall spending does not include expenditures of Federal funds or generally funds from restricted sources (e.g., settlement funds, highway funds, or wildlife funds). A State may not use final appropriated or allocated amounts that differ from actual State expenditures. Furthermore, a State’s overall spending may differ from its initial appropriated amounts or the revenues that a State generates each year.

#### **5. Must a State use the same data sources each year to determine State support for elementary and secondary education, State support for higher education, and overall State spending?**

The data a State uses for purposes of the MOE requirements must be consistent from year to year. As a result, a State must use the same data sources to determine State support for elementary and secondary education and for higher education across fiscal years. Similarly, a State must use the same data sources in determining overall State spending for the baseline years and FYs 2022 and 2023.

A State may update previously submitted MOE data and incorporate data from other sources as long as it continues to use the same data sources across fiscal years. A State may update previously submitted CARES Act MOE data through May 1, 2021.

#### **6. May the Secretary waive the MOE requirements in the CARES Act, the CRRSA Act, and the ARP Act?**

Yes. Under the waiver authority in section 2004(a)(2) of the ARP Act, the Secretary may waive any MOE requirements associated with the Education Stabilization Fund (e.g., CARES Act, CRRSA Act, and ARP Act MOE requirements) for the purpose of relieving fiscal burdens incurred by States in preventing, preparing for, and responding to the coronavirus. Accordingly, in the context of the factors described below in FAQ 8, this standard applies to MOE waivers under section 2004(a)(1) of the ARP Act, section 18008(b) of the CARES Act, and section 317(b) of Division M of the CRRSA Act.

#### **7. What information must a State provide to request an MOE waiver under the CARES Act, the CRRSA Act, and the ARP Act?**

In seeking an MOE waiver, a State must submit:

- (a) Data substantiating the levels of State support for elementary and secondary education and for higher education for any fiscal year for which a waiver is requested;
- (b) Data substantiating the State’s overall spending or data on appropriated or allocated amounts available for State spending (if a waiver is requested for FY 2022 or 2023);
- (c) A description of the extent to which the State experienced fiscal burdens as a result of preventing, preparing for, and responding to the coronavirus and an explanation of how those fiscal burdens affected the State’s ability to maintain fiscal effort (e.g., the status of and any changes to the State’s rainy day fund, whether the State experienced a decline in revenues, or an increase in other

emergency expenses resulting from the pandemic, such as expenses related to health care, unemployment insurance, or support for small businesses); and

- (d) Documentation and data supporting the description of the State's fiscal burdens (e.g., revenue data, appropriation tables, unemployment statistics, etc.) including any State actions that impacted State revenue (e.g., tax increases or decreases).

In addition, in its waiver request, a State should submit information on the relevant factors listed in FAQ 8 to support its request. A State must submit the MOE waiver request form (Appendix C) when requesting a waiver. The Secretary may ask States for additional information after States submit the MOE waiver request form.

## **8. What factors might the Secretary consider in deciding whether to grant a State's MOE waiver request?**

The Department's approach to MOE waiver requests will be rooted in the consideration of the impact on students. The purpose of ARP ESSER, ESSER I, ESSER II, GEER I, GEER II, and EANS funds is to expand resources for K-12 and postsecondary schools and students, not to replace existing State commitments to K-12 and postsecondary education.

As a result, in determining whether to grant a State an MOE waiver, the Secretary may consider factors such as:

### **Has the State increased support for education?**

The Department understands that it is possible that a State has maintained or increased overall funding for education and the proportion of the State budget for education has still declined because of increases in other areas of the budget (e.g., public health). In these cases, the Secretary may consider:

- Has total State funding for K-12 education and for higher education (calculated separately) increased from the prior fiscal year?
- Has total State funding for K-12 education and for higher education (calculated separately) increased over time (e.g., since baseline years)?
- Has per-pupil State funding for K-12 education and for higher education (calculated separately) increased from the prior fiscal year?
- Has per-pupil State funding for K-12 education and for higher education (calculated separately) increased over time (e.g., since baseline years)?
- Has the State appropriated an increase in State funding for K-12 education and for higher education for future fiscal years?

### **Are there exceptional circumstances that caused the State to be unable to maintain support for education?**

If a State's support for education declined, the Secretary may consider:

- Are there specific severe effects of the COVID-19 pandemic on the State's economy that necessitated reductions in support for elementary and secondary education and for higher education?
- What steps did the State take to avoid and/or minimize such reductions?
- Did the State use Coronavirus State and Local Fiscal Recovery Funds awarded by the U.S. Department of the Treasury under section 9901 of the ARP Act to support elementary and secondary education and higher education?

- How did reductions in support for elementary and secondary education and for higher education compare to other budget categories?
- Did the State take steps that reduced or will it take steps to proactively reduce its financial resources in a way that impacted or will impact its ability to meet MOE requirements (e.g., tax changes (and in what context), additional contributions to rainy day funds)? If so, what was the impact of the reduction or what is the anticipated impact (e.g., to what extent were its resources reduced or will its resources be reduced)?

**Has the State used or will it use ESSER, GEER, or Higher Education Emergency Relief (HEER) funding to replace State funding for education?**

It is important for the Department to understand the State's use of pandemic-related Federal funds when reviewing a request for a waiver. The Secretary may therefore consider:

- Will all unallocated ESSER or GEER funds relevant to the waiver be used to provide net new resources to K-12 schools and to higher education and not be used to replace existing State commitments to K-12 education and to higher education?
- Will all unallocated HEER funds be used to provide net new resources to higher education and not be used to replace existing State commitments to higher education?
- Has the State previously used any ESSER, GEER, or HEER funds to replace State funding for education?

Note that the factors listed above may not be used to demonstrate that the State maintained effort but rather are considerations for determining whether a waiver is warranted.

**9. When may a State request a waiver of the CARES Act MOE requirements?**

A State may request a waiver of the CARES Act MOE requirements at this time for FYs 2020 and 2021. A State may include requests related to more than one fiscal year in a single waiver request, if necessary.

**10. When may a State request a waiver of the CRRSA Act and ARP Act MOE requirements?**

A State may request a waiver of the CRRSA Act and ARP Act MOE requirements when the State can demonstrate that it is unable to comply with the MOE requirements for FY 2022 or FY 2023.

The CRRSA Act and ARP Act require a State to meet MOE based on its levels of State support for education relative to overall State spending. Accordingly, a State generally will not be able to fully demonstrate it failed to meet the CRRSA Act or ARP Act MOE requirements until it has available expenditure data to document overall State spending for the applicable fiscal year(s) (i.e., FY 2022 and/or FY 2023).

However, in some circumstances, a State may be able to accurately project, prior to the close of a fiscal year for which fiscal effort must be maintained, that it will not maintain effort based on, for example, a level of appropriated funds that would not permit the requisite expenditures. In such circumstances, the State may request an MOE waiver on the basis of projected data. Based on the strength of the projected data and other information submitted by the State, the Secretary would consider making a preliminary waiver determination before final expenditure data are available. Any preliminary determination to grant a waiver would be conditioned on an assurance that the State will not subsequently decrease either its level of State support for elementary and secondary education or higher education as demonstrated in the original waiver request. That

preliminary waiver determination would become the Secretary's final determination after the State submits final expenditure data and demonstrates that it met the condition on levels of State support.

**11. How may a State request a waiver of the MOE requirements under the CARES Act, CRRSA Act, or ARP Act?**

State must submit its waiver request to the Department using the MOE waiver request form (Appendix C) and submitting the form through its State mailbox, which is [State].[oeese@ed.gov](mailto:oeese@ed.gov).

**12. What enforcement actions may the Secretary take if a State fails to maintain fiscal effort and does not receive a waiver?**

If a State fails to meet the MOE requirements and does not request and receive an MOE waiver, the Department has available a range of enforcement options. For example, the Department could seek recovery of funds under section 452 of the General Education Provisions Act (GEPA) and withhold the remaining amount of a State's GEER I and II, ESSER I and II, EANS, and ARP ESSER awards, as applicable, under section 455 of GEPA.

## Appendix A: Calculating MOE under CARES Act, CRRSA Act & ARP Act Worksheet

|                                     | CARES Act ( <a href="#">Section 18008</a> )  | CRRSA Act (Division M, <a href="#">Section 317</a> ) & ARP Act ( <a href="#">Section 2004(a)</a> )  |
|-------------------------------------|--|---|
| <b>State Sources of MOE data</b>    | <p><b>State support data:</b> A State may use <i>either</i> actual State expenditure data or data representing final appropriated or allocated amounts for both the baseline levels and the applicable comparison level (FY 2020 and FY 2021).</p>   | <p><b>State support data:</b> A State may use <i>either</i> actual State expenditure data or data representing final appropriated or allocated amounts for both the baseline levels and the applicable comparison level (FY 2022 and FY 2023).</p> <p><b>State overall spending data:</b> A State <i>must</i> use data on <i>actual</i> State expenditures to demonstrate overall spending. A State may not use final appropriated or allocated amounts.</p>  |
| <b>Calculation of MOE baselines</b> | <p><b><u>Elementary and Secondary Education Baseline:</u></b></p> <ol style="list-style-type: none"> <li>Determine State support for elementary and secondary education for each of FYs 2017, 2018, and 2019.</li> <li>Average the State support for elementary and secondary education for these three fiscal years.</li> </ol> <p><b><u>Example:</u></b><br/> State support for elementary and secondary education:<br/> 2017: \$75<br/> 2018: \$125<br/> 2019: \$100</p> <p>Elementary and Secondary Education Baseline: Average = <math>(\\$75 + \\$125 + \\$100)/3 = \\$100</math></p> <p><b><u>Higher Education Baseline:</u></b></p> <ol style="list-style-type: none"> <li>Determine State support for higher education for each of FYs 2017, 2018, and 2019.</li> <li>Average State support for higher education for these three fiscal years.</li> </ol> | <p><b><u>Elementary and Secondary Education Baseline:</u></b></p> <ol style="list-style-type: none"> <li>Determine State support for elementary and secondary education for each of FYs 2017, 2018, and 2019.</li> <li>Determine overall State spending for each of FYs 2017, 2018, and 2019.</li> <li>Calculate the percentage of total State spending that is used to support elementary and secondary education for each of the three fiscal years by dividing the State's support for elementary and secondary education by the State's overall spending for each of the three fiscal years.</li> <li>Average the elementary and secondary education baseline percentages for the three fiscal years.</li> </ol> <p><b><u>Example:</u></b><br/> State support for elementary and secondary education:<br/> 2017: \$75<br/> 2018: \$125<br/> 2019: \$100</p> <p>State's overall spending:<br/> 2017: \$1200<br/> 2018: \$800</p> |

|  | CARES Act ( <a href="#">Section 18008</a> )   | CRRSA Act (Division M, <a href="#">Section 317</a> ) & ARP Act ( <a href="#">Section 2004(a)</a> )   |
|--|---|--|
|  | <p><b>Example:</b><br/> State support for higher education:<br/> 2017: \$30<br/> 2018: \$35<br/> 2019: \$25</p> <p>Higher Education Baseline:<br/> Average = <math>(\\$30 + \\$35 + \\$25)/3 = \\$30</math></p> | <p>2019: \$1000</p> <ol style="list-style-type: none"> <li>1. Calculate the percentage of total State spending that is used to support elementary and secondary education:<br/> 2017: <math>\\$75/\\$1200 = 6.3\%</math><br/> 2018: <math>\\$125/\\$800 = 15.6\%</math><br/> 2019: <math>\\$100/\\$1000 = 10\%</math></li> <li>2. Baseline percentage of support for elementary and secondary education: Average the percentages in line 1:<br/> <math>(6.3\% + 15.6\% + 10\%)/3 = 10.6\%</math></li> </ol> <p><b><u>Higher Education Baseline:</u></b></p> <ol style="list-style-type: none"> <li>1. Determine State support for higher education for each of FYs 2017, 2018, and 2019.</li> <li>2. Determine overall State spending for each of FYs 2017, 2018, and 2019.</li> <li>3. Calculate the percentage of total State spending that is used to support higher education for each of the three fiscal years by dividing the State's support for higher education by the State's overall spending for each of the three fiscal years.</li> <li>4. Average the higher education baseline percentages for the three fiscal years.</li> </ol> <p><b><u>Example:</u></b><br/> State support for higher education:<br/> 2017: \$30<br/> 2018: \$35<br/> 2019: \$25</p> <p>State's overall spending:</p> |

|                           |   |   |
|---------------------------|---|---|
|                           | <b>CARES Act</b> ( <a href="#">Section 18008</a> )  | <b>CRRSA Act</b> (Division M, <a href="#">Section 317</a> ) & <b>ARP Act</b> ( <a href="#">Section 2004(a)</a> )  |
|                           |   | <p>2017: \$1200<br/>2018: \$800<br/>2019: \$1000</p> <ol style="list-style-type: none"> <li>1. Calculate the percentage of total State spending that is used to support higher education:<br/>2017: <math>\\$30/\\$1200 = 2.5\%</math><br/>2018: <math>\\$35/\\$800 = 4.4\%</math><br/>2019: <math>\\$25/\\$1000 = 2.5\%</math></li> <li>2. Baseline percentage of support for higher education:<br/>Average the percentages in line 1: <math>(2.5\% + 4.4\% + 2.5\%)/3 = 3.1\%</math></li> </ol>   |
| <b>Calculation of MOE</b> | <p><b><u>Elementary and Secondary Education Calculation:</u></b></p> <ol style="list-style-type: none"> <li>1. Determine the level of support for elementary and secondary education for each of FYs 2020 and 2021.</li> <li>2. Compare FY 2020 level of support for elementary and secondary education to elementary and secondary education baseline.</li> <li>3. Compare FY 2021 level of support for elementary and secondary education to elementary and secondary education baseline.</li> </ol> <p><b><u>Example:</u></b><br/>State support for elementary and secondary education:<br/>2020: \$125<br/>2021: \$90</p> <p>Elementary and Secondary Education Baseline: \$100</p> | <p><b><u>Elementary and Secondary Education Calculation:</u></b></p> <ol style="list-style-type: none"> <li>1. Determine the level of support for elementary and secondary education in the applicable fiscal year (FY 2022 or FY 2023).</li> <li>2. Determine State's overall spending in the applicable fiscal year (FY 2022 or FY 2023).</li> <li>3. Calculate the percentage of total State spending that is used to support elementary and secondary education for the applicable fiscal year (FY 2022 or FY 2023) by dividing the State's support for elementary and secondary education by the State's overall spending for the applicable fiscal year (FY 2022 or FY 2023).</li> </ol> <p><b><u>Example for ARP FY 2023 MOE:</u></b><br/>Note: This example illustrates the MOE calculation for FY 2023. A State must do this calculation separately for FY 2022 and FY 2023.</p> |

|  | <b>CARES Act</b> ( <a href="#">Section 18008</a> )  | <b>CRRSA Act</b> (Division M, <a href="#">Section 317</a> ) & <b>ARP Act</b> ( <a href="#">Section 2004(a)</a> )  |
|--|---|---|
|  | <p><b><u>MOE determination:</u></b><br/> State support for elementary and secondary education in FY 2020 is \$125, which is more than the baseline of \$100. State meets MOE requirement for FY 2020.</p> <p>State support for elementary and secondary education in FY 2021 is \$90, which is less than the baseline of \$100. State does not meet the MOE requirement for elementary and secondary education for FY 2021 and may request a waiver of this MOE requirement from the Secretary.</p> <p><b><u>Higher Education Calculation:</u></b></p> <ol style="list-style-type: none"> <li>1. Determine the level of support for higher education for each of FYs 2020 and 2021.</li> <li>2. Compare FY 2020 level of support for higher education to higher education baseline.</li> <li>3. Compare FY 2021 level of support for higher education to higher education baseline.</li> </ol> <p><b><u>Example:</u></b><br/> State support for higher education:<br/> 2020: \$30<br/> 2021: \$25</p> <p>Higher Education Baseline: \$30</p> <p><b><u>MOE determination:</u></b><br/> State support for higher education in FY 2020 is \$30, which is the same as the baseline of \$30. State meets MOE requirement for FY 2020.</p> <p>State support for higher education in FY 2021 is \$25, which is less than the baseline of \$30. State does not meet the MOE</p> | <p>State support for elementary and secondary education:<br/> 2023: \$125</p> <p>State's overall spending:<br/> 2023: \$1000</p> <p>Percentage of State support for elementary and secondary education in FY 2023: <math>\\$125/\\$1000 = 12.5\%</math></p> <p>Baseline percentage of support for elementary and secondary education: 10.6%</p> <p><b><u>MOE determination:</u></b><br/> The proportion of overall spending used to support elementary and secondary education in FY 2023 is 12.5%, which is more than the baseline of 10.6%. State meets the MOE requirement for elementary and secondary education for FY 2023.</p> <p><b><u>Higher Education Calculation:</u></b></p> <ol style="list-style-type: none"> <li>1. Determine the level of support for higher education in the applicable fiscal year (FY 2022 or FY 2023).</li> <li>2. Determine State's overall spending in the applicable fiscal year (FY 2022 or FY 2023).</li> <li>3. Calculate the percentage of total State spending that is used to support higher education for the applicable fiscal year (FY 2022 or FY 2023) by dividing the State's support for higher education by the State's overall spending for the applicable fiscal year (FY 2022 or FY 2023).</li> </ol> <p><b><u>Example for ARP FY 2023 MOE:</u></b><br/> Note: This example illustrates the MOE calculation for FY</p> |

|  | CARES Act ( <a href="#">Section 18008</a> )  | CRRSA Act (Division M, <a href="#">Section 317</a> ) & ARP Act ( <a href="#">Section 2004(a)</a> )   |
|--|--|--|
|  | <p>requirement for higher education for FY 2021 and may request a waiver of this MOE requirement from the Secretary.</p> | <p>2023. A State must do this calculation separately for FY 2022 and FY 2023.</p> <p>State support for higher education:<br/>2023: \$30</p> <p>State's overall spending:<br/>2023: \$1000</p> <p>Percentage of State support for higher education in FY 2023:<br/><math>\\$30/\\$1000 = 3\%</math></p> <p>Baseline percentage of State support for higher education:<br/>3.1%</p> <p><b><u>MOE determination:</u></b><br/>The proportion of overall spending used to support higher education in FY 2023 is 3%, which is less than the baseline of 3.1%. State does not meet the MOE requirement for higher education for FY 2023 and may request a waiver of this MOE requirement from the Secretary.</p> |

## Appendix B: MOE Data Submission

State \_\_\_\_\_

### Data Submission Timelines

|         | State support for elementary and secondary education  | State support for higher education | Overall State spending |
|---------|---|------------------------------------|------------------------|
| FY 2017 | Submitted September 1, 2020;<br>May be updated by May 17, 2021  |                                    | Due May 17, 2021       |
| FY 2018 |   |                                    |                        |
| FY 2019 |   |                                    |                        |
| FY 2020 | Submitted December 30, 2020;<br>May be updated by May 17, 2021  |                                    |                        |
| FY 2021 | Collected by December 30, 2021  |                                    |                        |
| FY 2022 | FY 2022 data on appropriated or allocated amounts for State support for elementary and secondary education, State support for higher education, and overall State spending will be collected by December 30, 2021. The Department intends to collect final expenditure data in spring 2023 when data are available. |                                    |                        |
| FY 2023 | FY 2023 data on appropriated or allocated amounts for State support for elementary and secondary education, State support for higher education, and overall State spending will be collected by December 30, 2022. The Department intends to collect final expenditure data in spring 2024 when data are available. |                                    |                        |

### Data for State support and overall State spending

A State must submit the required information below. Additionally, a State may use this form to update previously submitted MOE data for FYs 2017, 2018, 2019, and 2020.

|   | State support for elementary and secondary education | State support for higher education | Overall State spending |
|---|--|------------------------------------|------------------------|
| <b>FY 2017</b>  | \$   | \$                                 | \$                     |
| <b>FY 2018</b>  | \$   | \$                                 | \$                     |
| <b>FY 2019</b>  | \$   | \$                                 | \$                     |
| <b>FY 2020</b>  | \$   | \$                                 | Not required           |
| <b>FY 2021</b>  | \$   | \$                                 | Not required           |
| <b>FY 2022 interim data (appropriated or allocated)</b> | \$   | \$                                 | \$                     |
| <b>FY 2022 (final data)</b>                             | \$   | \$                                 | \$                     |
| <b>FY 2023 interim data (appropriated or allocated)</b> | \$   | \$                                 | \$                     |
| <b>FY 2023 (final data)</b>                             | \$   | \$                                 | \$                     |

**Additional submission requirements:** In an attachment, identify and describe the data sources used in determining the levels of —

- (a) State support for elementary and secondary education;
- (b) State support for higher education; and
- (c) Overall State spending.

NOTE: You are only required to submit this information for data categories included in your submission above.

To the best of my knowledge and belief, all of the information in this MOE data submission is true and correct and the failure to submit accurate data may result in liability under the False Claims Act, 31 U.S.C. § 3729 et seq.; OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and 18 USC § 1001, as appropriate, and other enforcement actions.

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Governor or Chief State School Officer or Authorized Representative (Typed or Printed Name)  
Telephone

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Signature of Chief State School Officer or Authorized Representative Date

#### **Public Burden Statement**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1810-0745. Public reporting burden for this collection of information is estimated to average 2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain benefit under section 18008 of the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act, Division M, Section 317 of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA) Act, and Section 2004(a) of the American Rescue Plan Act of 2021 (ARP Act) If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application or survey, please contact Britt Jung, Office of State and Grantee Relations, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202-6450, email: [SGR@ed.gov](mailto:SGR@ed.gov) directly.

## Appendix C: MOE Waiver Request

This form must be used for the submission of a request for a waiver of the requirements noted below. For assistance please contact your State mailbox, which is [State].[oeese@ed.gov](mailto:oeese@ed.gov).

State \_\_\_\_\_

On behalf of my State, I request a waiver of the following State maintenance of effort (MOE) requirements for the following fiscal years:

*Please check all that apply:*

- ☐ FY 2020 MOE requirement for elementary and secondary education under section 18008 of the CARES Act.
- ☐ FY 2020 MOE requirement for higher education under section 18008 of the CARES Act.
- ☐ FY 2021 MOE requirement for elementary and secondary education under section 18008 of the CARES Act.
- ☐ FY 2021 MOE requirement for higher education under section 18008 of the CARES Act.
- ☐ FY 2022 MOE requirement for elementary and secondary education under section 317(a) of the CRRSA Act and section 2004(a) of the ARP Act.
- ☐ FY 2022 MOE requirement for higher education under section 317(a) of the CRRSA Act and section 2004(a) of the ARP Act.
- ☐ FY 2023 MOE requirement for elementary and secondary education under section 2004(a) of the ARP Act.
- ☐ FY 2023 MOE requirement for higher education under section 2004(a) of the ARP Act.

### Data for State support and overall State spending

A State must resubmit the baseline data for FYs 2017, 2018, and 2019 (baseline years) as part of this MOE waiver request. If these baseline data differ from a State's previously submitted data, please provide a description of the reason for the change. Additionally, a State must submit MOE data for the years in which it is requesting this waiver.

|         | State support for elementary and secondary education | State support for higher education | Overall State spending * |
|---------|--|------------------------------------|--------------------------|
| FY 2017 | \$   | \$                                 | \$                       |
| FY 2018 | \$   | \$                                 | \$                       |
| FY 2019 | \$   | \$                                 | \$                       |
| FY 2020 | \$   | \$                                 | \$                       |
| FY 2021 | \$   | \$                                 | \$                       |
| FY 2022 | \$   | \$                                 | \$                       |
| FY 2023 | \$   | \$                                 | \$                       |

\*For overall State spending, a State may request a waiver based on final allocations or appropriations. For more information, see FAQ 10.

### Additional submission requirements

In an attachment, please provide:

1. A description of the extent to which the State experienced fiscal burdens in preventing, preparing for, and responding to the coronavirus and an explanation of how those fiscal burdens affected the State's ability to maintain fiscal effort (e.g., the status of and any changes to the State's rainy day fund, whether the State experienced a decline in revenues, or an increase in other emergency expenses resulting from the

pandemic, such as expenses related to health care, unemployment insurance, or support for small businesses); and

2. Documentation and data supporting the description of the State's fiscal burdens (e.g., revenue data, appropriation tables, unemployment statistics, etc.) including any State action that impacted State revenue (e.g., tax increases or decreases).
3. In addition, in its waiver request, a State should submit information on the relevant factors listed below to support its request. The Secretary may ask States for additional information after States submit the MOE waiver request form.

In determining whether to grant a State an MOE waiver, the Secretary may consider factors such as:

**Has the State increased support for education?**

The Department understands that it is possible that a State has maintained or increased overall funding for education and the proportion of the State budget for education has still declined because of increases in other areas of the budget (e.g., public health). In these cases, the Secretary may consider:

- Has total State funding for K-12 education and for higher education (calculated separately) increased from the prior fiscal year?
- Has total State funding for K-12 education and for higher education (calculated separately) increased over time (e.g., since baseline years)?
- Has per-pupil State funding for K-12 education and for higher education (calculated separately) increased from the prior fiscal year?
- Has per-pupil State funding for K-12 education and for higher education (calculated separately) increased over time (e.g., since baseline years)?
- Has the State appropriated an increase in State funding for K-12 education and for higher education for future fiscal years?

**Are there exceptional circumstances that caused the State to be unable to maintain support for education?**

If a State's support for education declined, the Secretary may consider:

- Are there specific severe effects of the COVID-19 pandemic on the State's economy that necessitated reductions in support for elementary and secondary education and for higher education?
- What steps did the State take to avoid and/or minimize such reductions?
- Did the State use Coronavirus State and Local Fiscal Recovery Funds awarded by the U.S. Department of the Treasury under section 9901 of the ARP Act to support elementary and secondary education and higher education?
- How did reductions in support for elementary and secondary education and for higher education compare to other budget categories?
- Did the State take steps that reduced or will it take steps to proactively reduce its financial resources in a way that impacted or will impact its ability to meet MOE requirements (e.g., tax changes (and in what context), additional contributions to rainy day funds)? If so, what was the impact of the reduction (e.g., to what extent were its resources reduced or will its resources be reduced)?

**Has the State used or will it use ESSER, GEER, or Higher Education Emergency Relief (HEER) funding to replace State funding for education?**

It is important for the Department to understand the State's use of pandemic-related Federal funds when reviewing a request for a waiver. The Secretary may therefore consider:

- Will all unallocated ESSER or GEER funds relevant to the waiver be used to provide net new resources to K-12 schools and to higher education and not be used to replace existing State commitments to K-12 education and to higher education?
- Will all unallocated HEER funds be used to provide net new resources to higher education and not be used to replace existing State commitments to higher education?
- Has the State previously used any ESSER, GEER, or HEER funds to replace State funding for education?

To the best of my knowledge and belief, all of the information in this MOE data submission are true and correct and the failure to submit accurate data may result in liability under the False Claims Act, 31 U.S.C. § 3729 et seq.; OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and 18 USC § 1001, as appropriate, and other enforcement actions.

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|   |           |
|---|-----------|
| Governor or Chief State School Officer or Authorized Representative (Typed or Printed Name) | Telephone |
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|--|------|
| Signature of Governor or Chief State School Officer or Authorized Representative | Date |
|--|------|

#### **Public Burden Statement**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1810-0745. Public reporting burden for this collection of information is estimated to average 2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain benefit under section 18008 of the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act, Division M, Section 317 of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA) Act, and Section 2004(a) of the American Rescue Plan Act of 2021 (ARP Act) If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have

comments or concerns regarding the status of your individual form, application or survey, please contact Britt Jung, Office of State and Grantee Relations, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202-6450, email: [SGR@ed.gov](mailto:SGR@ed.gov) directly.