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].oese@ed.gov .

State West Virginia

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	$ 2,007,444,398	$ 449,121,680	$ 4,862,402,642
FY 2018	$ 2,023,964,605	$ 433,955,901	$ 4,945,595,984
FY 2019	$ 2,095,058,773	$ 458,594,564	$ 5,136,628,609
FY 2020	$	$	$
FY 2021	$	$	$
FY 2022	$ 2,009,911,040	$ 464,345,266	$ 5,357,274,216
FY 2023	$ 2,062,315,344	$ 498,188,940	$ 5,070,499,269

*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 <u>not</u> 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 <u>not</u> 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.

James C. Justice, II, Governor	304-558-2000
Governor or Chief State School Officer or Authorized Representative (Typed or Printed Name)	Telephone
	06/14/2022
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 directly.

WV MOE Waiver Request – Additional Submission Requirements Attachment

1. **A description of the extent to which the State experienced fiscal burden 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)**

   At the beginning of the pandemic West Virginia experienced a drop in revenue and revenue budget estimates had to be adjusted accordingly. The pandemic had negative effects on West Virginia's businesses and citizens, with the unemployment rate rising significantly. Using the revenue definitions and calculation methodology submitted for the U.S. Department of the Treasury for the State Fiscal Recovery Fund allocation through the American Rescue Plan Act, the state experienced a revenue shortfall of nearly $738,235,338 when comparing the state's general fund budget for 2020 to that of fiscal year 2019. This projected shortfall is significant when compared to the state's total general revenue budget. Using this method, a shortfall was also calculated for the state's general revenue fund in 2021.

   During 2021, the state experienced significant strains on its health care system as a result of the Delta variant. The state moved quickly to institute the Saving our Care initiative (SOC). The SOC initiative allocated over $13 million in state revenue to provide staffing assistance and financial help to hospitals and assisted living facilities. These funds also provided additional financial assistance to hospitals that were suffering financially due to the deferment of elective procedures. The SOC initiative was necessary to ensure the continuity of medical services so that medical care would not have to be rationed.

   The pandemic not only strained the state's medical system, but it also caused large increases in enrollment in the state's Medicaid system from March 2020 to March 2022. This increase is expected to cost the state over $99 million with additional state funding provided to cover this pandemic related cost.

2. **Documentation and data supporting the description of the State's fiscal burdens (e.g., revenue data, appropriate tables, unemployment statistics, etc.) including any state action the impacted State revenue (e.g., tax increases or decreases).**

State of West Virginia Revenue Loss (as defined by US Dept of Treasury Interim Final Rule)

	2020	2021
Base Year General Revenue	$8,774,682,834	$8,774,682,834
Actual General Revenue	$8,729,694,639	$9,610,468,349
Growth Adjustment Rate	5.2%	5.2%
Adjusted Revenue	$9,467,929,977	$9,960,262,336
Estimated Loss due to COVID	$738,235,338	$349,793,987

WV General Revenue Fund Reports

Monthly Revenue and Cash Flow Reports (wv.gov)

Workforce WV Unemployment Statistics

WorkForce West Virginia LMI (workforcewv.org)

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.**

Has the State increased support for education?

The State of West Virginia funds education on a formula basis which is primarily driven by student enrollment. The pandemic brought many challenges to the state education system, one of those being declining enrollment. The state saw less students being enrolled in Pre-k, with parents choosing instead to keep their children home until kindergarten. Higher Ed also saw a large enrollment decline during the pandemic, with students choosing not to enroll in programs while they remained virtual. However, as you can see from the charts below, the state not only maintained but is on track to steadily increase education spending when analyzed on a per pupil basis. Also, when looking at total education spending, the state continues to increase its total spending on education despite the declining enrollment trends. So not only did the state maintain it's funding formula on a per-pupil-basis, it continued to increase funding to education over and above the state required formula as can be seen with the increasing education funding trend compared to the decreasing enrollment trend.

Baseline Years to establish MOE Targets

	Overall Spending	K12 Spending	Enrollment	Per Pupil Spending	Higher Ed Spending	Enrollment	Per Pupil
FY17	$4,862,402,642	$2,007,444,398	273,170	$7,348.70	$449,121,680	61,438	$7,310.16
FY18	$4,945,595,984	$2,023,964,605	270,613	$7,479.18	$433,955,901	60,038	$7,228.02
FY19	$5,136,628,609	$2,095,058,773	265,755	$7,883,42	$458,594,564	59,159	$7,751.90
Avg				$7,570.44			$7,430.03

Projected MOE Based upon Interim Spending and Approved Budget Data

	Overall Spending	K12 Spending	Enrollment	Per Pupil Spending	Higher Ed Spending	Enrollment	Per Pupil
FY22	$5,357,274,216	$2,009,911,040	250,899	$8,010.84	$464,345,266	48,885	$9,498.73
FY23	$5,070,499,269	$2,062,315,344	250,899*	$8,219.70	$498,188,940	48,885*	$10,191.04

*** Using 2022 enrollment to estimate MOE until actual 2023 enrollment has been established**

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

Although the state did experience a decline in revenue due to the economic effects of the pandemic, the state did not make cuts to education spending. The state's inability to maintain effort is mainly due to the stark differences in the way MOE is calculated compared to how education is funded in West Virginia. When looking at the chart above the state is on track to increase spending in both 2022 and 2023 on a per-pupil basis by 5.8% and 8.5% for K12 and 27.8% and 37.1% for higher education, respectively.

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

No. The state has not, nor does it intend to use ESSER, GEER, or Higher Education Emergency Relief (HEER) funding to replace State funding for education. All ESSER, GEER and HEER funds were allocated for new supplemental educational activities over and above what the state funding formulas provide.