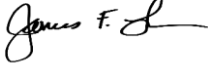




## UNITED STATES DEPARTMENT OF EDUCATION

December 22, 2022

TO: Governors  
Chief State School Officers

FROM: James F. Lane, Ed.D.   
Senior Advisor, Office of the Secretary  
Delegated the Authority to Perform the Functions and Duties of the  
Assistant Secretary for Elementary and Secondary Education

SUBJECT: Maintenance of Effort and Maintenance of Equity Requirements

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### **Introduction**

Thank you for your ongoing work to implement the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSA Act) and the American Rescue Plan Act of 2021 (ARP Act) to support a strong, equitable educational recovery.

With leadership transitions occurring in State executive chambers and State educational agencies (SEAs) and planning for the next State fiscal year underway, I write to share important information regarding the maintenance of effort (MOE) requirements in Division M, section 317 of the CRRSA Act and section 2004(a) of the ARP Act, as well as the maintenance of equity (MOEquity) requirements in section 2004(b) of the ARP Act. Specifically, this update: (1) reminds States that these MOE and MOEquity requirements apply in both fiscal years (FYs) 2022 and 2023; and (2) urges States that are not on track to meet FY 2022 requirements for either MOE or MOEquity to contact the Department to secure technical assistance and explore avenues to address any non-compliance.

### **Maintenance of Effort**

The CRRSA Act and ARP Act require each State to separately maintain support for both elementary and secondary education and higher education relative to the State's overall spending in FYs 2022 and 2023 compared to a 3-year baseline (average of FYs 2017, 2018, and 2019). As of December 15, 2022, for FY 2022 MOE requirements:

- 37 States have provided interim data demonstrating MOE for elementary and secondary education;
- 48 States have provided interim data demonstrating MOE for higher education; and,

- 35 States have provided interim data demonstrating MOE for both elementary and secondary education and higher education.

In limited cases, the Department may consider whether State-specific circumstances justify a waiver of MOE requirements for the purpose of relieving fiscal burdens incurred by States in preventing, preparing for, and responding to COVID-19. **States intending to seek a waiver of FY 2022 MOE requirements should submit a detailed waiver request by March 15, 2023. The request must include final FY 2022 expenditure data as outlined in the Department’s August 2022 [guidance](#).**<sup>1</sup> The request may include information on the steps the State has taken or will take in FY 2023 to address the FY 2022 MOE shortfall with additional appropriations.

Over the next several weeks, members of my leadership team will be reaching out to States that provided interim data demonstrating that they may not maintain effort in FY 2022 to discuss any pending State actions and the Department’s next steps in ensuring compliance with these important requirements. The Department will continue to provide technical assistance to States that submitted a waiver request for FY 2022.

### **Maintenance of Equity**

State MOEquity provisions help protect local educational agencies (LEAs) serving high concentrations of students in poverty from disproportionate reductions in elementary and secondary education funding. MOEquity requirements apply in both FYs 2022 and 2023.

The Department does not have the authority to waive MOEquity requirements. With FY 2022 closed, any State that did not meet the MOEquity requirements for applicable high-need and highest-poverty LEAs must contact its State and Grantee Relations program officer to discuss options for mitigating the impact of the violation. Where appropriate, these options include, but are not limited to, submitting a small LEA tolerance proposal<sup>2</sup> or making additional appropriations in FY 2023 to fully address FY 2022 shortfalls for impacted LEAs. As with the MOE requirements, the Department continues to stand ready to provide technical assistance to States in meeting their obligations under the MOEquity requirements.

For additional information on MOEquity requirements and technical assistance resources, visit the Department’s [ARP ESSER Maintenance of Equity](#) resource page.

### **Conclusion**

Thank you for your continued efforts to put Federal education recovery funds to work on behalf of your schools, students, educators, and families. The Department recognizes that MOE and

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<sup>1</sup> See [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](#).

<sup>2</sup> See FAQ 21(a), [Frequently Asked Question American Rescue Plan Elementary and Secondary School \(ESSER\) Program Maintenance of Equity Requests \(updated July 26, 2022\)](#).

MOEquity requirements require coordinated, multi-year actions among governors, State appropriators, and SEAs, and we stand ready to support all of our State partners in ensuring meaningful implementation of these critical resource equity provisions.

CC: National Governors Association  
Council of Chief State School Officers  
National Conference of State Legislatures