



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

August 31, 2023

TO: Chief State School Officers

FROM: Adam Schott
Deputy Assistant Secretary for Policy and Programs
Delegated the Authority to Perform the Functions and Duties of the
Assistant Secretary for Elementary and Secondary Education

SUBJECT: Fiscal Years 2022 and 2023 Maintenance of Equity Requirements

Thank you for your ongoing partnership in implementing the American Rescue Plan Act of 2021 (ARP Act) to support a strong, equitable educational recovery. I'm writing today with a status report on State compliance with the ARP Act's Fiscal Year (FY) 2022 maintenance of equity (MOEquity) requirements and an update on the Department's next steps as we turn our focus to FY 2023 requirements. We appreciate the work of State educational agency (SEA) leadership and staff, including their consultation with State executive and legislative branches, to implement these important provisions and safeguard high-need communities from disproportionate budget reductions.

Implementation Status Report

State Requirements

As of August 31, 2023, **40 States have demonstrated compliance with State-level MOEquity requirements**. States have demonstrated compliance by: 1) submitting FY 2022 data assuring that highest-poverty and high-need local educational agencies (LEAs) did not experience disproportionate reductions in State per-pupil funding; 2) receiving Department approval of a tolerance proposal when a subset of small LEAs experienced changes in student enrollment that created variability in State per-pupil funding; and 3) making supplemental payments to LEAs to mitigate a FY 2022 shortfall. To date, 12 States have provided nearly \$240 million in supplemental payments to more than 280 impacted LEAs.

The Department is currently working to review remaining FY 2022 small LEA tolerance proposals and conduct a final round of technical assistance that builds on the more than 100 State calls conducted since summer 2022. Monitoring findings for States that continue to exhibit non-compliance will be issued beginning in October 2023.

LEA Requirements

LEA-level MOEquity requirements help protect high-poverty schools serving high concentrations of economically-disadvantaged students from disproportionate reductions in elementary and secondary education funding and full-time equivalent (FTE) staffing levels. Under the Department's June 2022 Notice of Final Requirements (NFR), States are required to publish the following LEA-level MOEquity data: 1) a list of LEAs excepted from LEA-level MOEquity requirements¹; 2) a list of remaining (non-excepted) high-poverty schools; and 3) a description of how the SEA will ensure that each non-excepted LEA is maintaining both fiscal and staffing equity in its high-poverty schools in both FYs 2022 and 2023. As of August 31, 2023, 47 States have published required high-poverty school data² and 29 States have demonstrated full compliance with LEA-level MOEquity requirements for FY 2022.

For remaining LEAs covered by the statutory requirement (Section 2004(c) of the ARP Act), for each school identified by the LEA as a high-poverty school, the LEA may not—

1. Reduce combined State and local per-pupil funding by an amount that exceeds the total reduction, if any, in LEA per-pupil funding for all schools served by the LEA in such fiscal year; or
2. Reduce the number of FTE staff per-pupil by an amount that exceeds the total reduction, if any, in FTE staff per-pupil in all schools served by the LEA in such fiscal year.

For purposes of demonstrating compliance with the MOEquity requirements, the NFR announced flexibility for an LEA to use allocated or budgeted data, or per-pupil expenditure data from Title I, part A report cards. The Department acknowledges that LEAs using per-pupil expenditures will not know whether they maintained equity until after the school year ends; accordingly, these LEAs will not be able to remedy a violation during that school year. If an LEA does not maintain equity and cannot make adjustments in that year, the LEA may make adjustments to funding and FTE staffing in a subsequent year to ensure that high-poverty schools in the LEA are treated equitably.

Any State with LEAs that did not meet the local MOEquity requirements for applicable high-poverty schools should continue to provide technical assistance to those LEAs on how to resolve any non-compliance, consistent with the description published on SEA websites, as required by

¹ Section 2004(c)(2) of the ARP Act excepts certain LEAs from the local maintenance of equity requirements if the LEA has a total enrollment of less than 1,000 students; operates a single school; serves all students within each grade span with a single school; or, demonstrates an exceptional or uncontrollable circumstance as determined by the Secretary. Additionally, as published in the MOEquity Frequently Asked Questions (Updated December 29, 2021), the Secretary determined that an LEA that did not have an aggregate reduction in combined State and local per-pupil funding in FY 2022 compared to FY 2021, or in FY 2023 compared to FY 2022, has also demonstrated an exceptional or uncontrollable circumstance to warrant an exception from maintaining equity for that fiscal year.

² The Department released an optional template to assist SEAs with this data collection, which is available [here](#).

2(b) in the NFR³. The Office of State and Grantee Relations will monitor SEA implementation of the LEA requirements and compliance status in FY 2024. The Department continues to be available to provide technical assistance to States to ensure LEAs meet their obligations under the MOEquity requirements.

Next Steps

As the Department prepares to finalize FY 2022 MOEquity compliance determinations, begin monitoring activities, and shift to implementation of FY 2023 requirements, States that have not yet demonstrated compliance with FY 2022 requirements should immediately contact their State program officer [*State.oese@ed.gov*] to develop a plan to meet these requirements before enforcement actions begin in October 2023.

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

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

³ NFR Requirement 2(b): Each SEA must publish on its website a description of how the SEA will ensure that each LEA that is not excepted from LEA-level maintenance of equity requirements is ensuring that its high-poverty schools are protected from any reduction of per-pupil funding by an amount that exceeds the overall per-pupil reduction in the LEA, if any, such that the LEA can make any necessary adjustments in a timely manner including information on when the SEA will determine LEAs are not compliant and the date that the SEA will require non-compliant LEAs to describe what adjustments the LEA will make to be in compliance prior to the start of the next school year.