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 ____Nebraska________________________

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.
X 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	$1,300,949,436	$716,624,446	$4,310,113,372
FY 2018	$1,323,018,413	$701,123,366	$4,333,769,383
FY 2019	$1,328,767,550	$717,430,768	$4,351,354,900
FY 2020	$1,397,731,297	$738,709,697	$
FY 2021	$1,391,753,311	$769,237,178	$
FY 2022	$1,388,675,397	$793,314,822	$4,635,947,630
FY 2023	$1,427,464,462	$818,588,064	$5,128,405,178

*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.

Jim Pillen 402-471-2244

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

March 15, 2024

Signature of Governor or Chief State School Officer or Authorized Representative Date

Nebraska application for a waiver from the proportionality requirements in CRRSA and ARPA.

The State of Nebraska is requesting a waiver of the proportionality requirement for elementary and secondary education for 2022-2023 reporting year. Our request is based on final allocations, or actual expenditures, based on the State's fiscal year that runs from July to June.

There has been no change to the 3-year average amounts for 2017, 2018, and 2019 that was previously submitted.

Additional submission requirements

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

Response:

Nebraska did not experience a decline in revenues. In the 2022-23 reporting year, Nebraska revenue exceeded the baseline 3-year average by $1.8 billion (39.1%). State spending on K-12 education exceeded the baseline 3-year average by $38.8 million (8.3%).

Nebraska did increase funding in various areas as a response to the pandemic. These areas included K-12 education, higher education, expanded Medicaid, public health districts, and health care providers. Spending on non-education programs utilized revenue growth resulting in an increase of $596.6 million (25.4%) over the baseline 3-year average.

Health and Human Services spending increased $330.3 million (21%) over the baseline 3-year average, and includes $183.7 million (21.6%) in Medicaid, $27.3 million (31%) at the State's rehabilitative facilities, $22.3 million (957.6%) in children's health insurance aid, $17.5 million (139.1%) in Medicaid and long-term care administration, $15 million (8.7%) in child welfare aid, and $10 million (79.2%) in family support.

Other substantive increases over the baseline 3-year average are primarily accounted for within the Department of Correctional Services, the Department of Revenue, and the Supreme Court. Correctional Services' spending increased by $115.7 million (55.8%), primarily attributable to staffing at the correctional facilities and inmate health care. The Department of Revenue's Homestead Exemption Program spending, providing aid to local governments to offset taxes levied by school districts, municipalities, counties, and other local political subdivisions, increased by $38.7 million (48.1%). Supreme Court spending increases include $26.2 million (34.7%) for probation services, $5.1 million (28.1%) for county court system assistance, $4.8 million (182.4%) for specialized courts, and $3.9 million (20.6%) for community corrections programs.

Actual state expenditures for K-12 education, as reported in the MOE, did not fully utilize $8 million of the appropriated state funding. This $8 million of state funding remains available for K-12 education into FY 2023-24. This unutilized $8 million was obligated in FY 2022-23 but will not be recorded as an expenditure until FY 2023-24.

Although the impact is outside the MOE period, in the 2023 legislative session Nebraska amended the primary equalization funding formula for K-12 education. Changes to the formula added foundation aid of $1,500 per K-12 student and increased state funding up to 80% of allowable costs for special education. Previously, the state funded approximately 49% of special education costs, with the difference being paid for by the school districts and federal government. This increase in funding will provide approximately $311 million for FY 2023-24 and $319 million for FY 2024-25 of in additional state funding to K-12 education.

Local property tax revenues used in calculating state support increased during the 2022-23 reporting year by $95 million. Overall school district expenditures increased by 5% in the 2020-21 reporting year, 3% in the 2021-22 reporting year, and 6% in the 2022-23 reporting year.

In October 2020, Nebraska expanded Medicaid to low-income childless adults. This necessitated an increase in the amount of state funding for Medicaid. Additional information in early 2021 regarding the level of services for the expansion population also increased the costs above previous estimates. This Medicaid expansion was a permanent increase to overall state spending beginning with the 2020-21 reporting year and continues to impact the 2022-23 reporting year and is not part of the baseline 3-year average. This is another example of an increase of overall spending for health care driven by pandemic factors and federal requirements that negatively impacted the proportion of funding calculations.

Nebraska also provided aid to all local public health districts during the COVID-19 pandemic. In the 2020-21 reporting year, it became clear future efforts to enhance public health and support would require additional staffing at local public health districts resulting in increases in the amount of annual state support. This investment will assist Nebraska in addressing health disparities and responding efficiently to public health needs across the state. This permanent new spending increased overall state spending beginning in the 2020-21 reporting year and continues to impact the 2022-23 reporting year and is not part of the baseline 3-year average. This is another example of an increase of overall spending for health care driven by pandemic factors that negatively impacted the proportion of funding calculations.

Similarly, Nebraska's health care provider costs increased to provide services. These increased permanent costs were addressed with a 2% annual increase in provider rates. This new spending on health care providers increased overall state spending beginning in the 2020-21 reporting year and continues to impact the 2022-23 reporting year and is not part of the baseline 3-year average. This is another example of an increase of overall spending for health care driven by pandemic factors that negatively impacted the proportion of funding calculations.

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).

Response:

The Nebraska Legislature passed LB873, known as the Property Tax Incentive Act, during the 2022 legislative session which utilized revenue growth to phase in reductions to the marginal individual income tax rate, the marginal corporate income tax rate, and exemption of Social Security income from individual income taxes. The marginal tax rates were both set to reduce from 7.25% and 6.84% respectively, to 5.84% by 2027. The Social Security income tax exemption was set to increase from 40% to 100% by 2025. The bill also increased the available Property Tax Incentive Act income tax credits by $375 million and called for annual growth in parity with real property assessed valuation growth up to 5%. These credits are claimed by taxpayers to offset property tax liabilities. An additional expansion to the Property Tax Incentive Act phased in credits available for community college property tax liability beginning with $50 million in 2023 and reaching $195 million by 2027. The total impact on the 2022-23 reporting year is estimated at $115.5 million in revenue loss over the prior year.

These tax changes did not impact funding available for education as the existing education formula was fully funded from both state sources and local property taxes.

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.

    NOTE: Only information relevant to the request for waiver of FY 2023 MOE requirement for elementary and secondary education under section 317(a) of the CRRSA Act and section 2004(a) of the ARP Act is included.

Response:

Has the State increased support for education?

Yes, Nebraska increased spending for both K-12 education and higher education. Calculated separately higher education continues to meet MOE requirements and thus does not require a waiver for the 2022-23 reporting year.

Has total State funding for K-12 education increased from the prior fiscal year?

Yes, State support of K-12 education increased by $38,789,064 (2.8%) from the 2021-22 reporting year to the 2022-23 reporting year. Additionally, local property taxes increased by $95 million to provide funding to school districts.

Has total State funding for K-12 education increased over time (e.g., since baseline years)?

Yes, State support of K-12 education increased by $109,885,995 (8.4%) from the baseline 3-year average to the 2022-23 reporting year.

Has per-pupil State funding for K-12 education increased from the prior fiscal year?

Yes, State support of K-12 education on a per-pupil basis increased by $90.49 (2.0%) from the 2021-22 reporting year to the 2022-23 reporting year. See table below.

Has per-pupil State funding for K-12 education increased over time (e.g., since baseline years)?

Yes, State support of K-12 education on a per-pupil basis increased by $268 (6.2%) from the baseline 3-year average to the 2022-23 reporting year. See table below.

	FY2016-17	FY2017-18	FY2018-19	3-year average	FY2021-22	FY2022-23
K-12 Total	$1,300,949,436	$1,323,018,413	$1,328,767,550	$1,317,578,466	$1,388,675,397	$1,427,464,462
Student Count	301,697	304,469	308,292	304,819	308,594	310,961
Funding Per Student	$4,312	$4,345	$4,310	$4,322	$4,500	$4,590
Prior Year		$33.22	$(35.23)		$44.98	$90.49
Base 3-Year Average					$177.52	$268.00

Has the State appropriated an increase in State funding for K-12 education and for higher education for future fiscal years?

Yes, the State has appropriated an increase of K-12 education support for FY 2023-24 of $333,172,606 (25%). This sizable increase includes the establishment of foundation aid of $1,500 per student in public schools and increase in state support for special education.

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?

The 2022 legislative session provided appropriations of $1.4 billion in support to K-12 education. Actual expenditures at the end of the 2021-22 reporting year were $8 million. This unspent authority remains available for K-12 spending in FY 2023-24. The existing funding formula also takes into account valuation increases and the ability for localities to finance their local school districts. The pandemic exacerbated the value of homes and drove property taxes up and limited the increase in state support.

Nebraska significantly increased state spending for health care, including Medicaid expansion, public health districts, and health care providers that resulted in significant increases in state spending not reflected in the baseline 3-year average. These additional expenditures resulted in proportional spending on K-12 education to be negatively impacted by 2.6%.

What steps did the State take to avoid and/or minimize such reductions?

The State did not reduce support for K-12 education. The State chose to increase support for both K-12 education and higher education. Changes in the proportionality of funding were a result of increased spending on health care beginning in the 2020-21 reporting year. Additionally, property taxes provided substantial revenue to school districts. This increased spreading is not included in the baseline 3-year average calculations.

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?

No, the State did not use Coronavirus State and Local Fiscal Recovery Funds to support K-12 education. Funding from this source was used to provide supplemental funding for dual enrollment at community colleges but this this was not provided during any of the reporting periods.

How did reductions in support for elementary and secondary education and for higher education compare to other budget categories?

There were no reductions in support to K-12 education or higher education. There are no planned reductions in support in FY 2023-24.

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)?

No, the State did not take actions to reduce State financial resources in a way that impacted the State's ability to support spending on K-12 education and higher education in the 2022-23 reporting year. The MOE issue is not caused by a reduction in spending on K-12 education or higher education in the 2022-23 reporting year. The state provided increased funding to K-12 education and higher education in accordance with existing state laws. In fact, the state increased the support to K-12 education beginning in FY 2023-24 by funding more of the special education costs of school districts and providing a foundation aid of $1,500 per student. This increase in funding will provide approximately $319 million a year in additional state funding to K-12 education beginning in FY 2023-24.

The Cash Reserve Fund year-end balance for 2023 was $1.6 billion, $1.2 billion (262.8%) higher than the 3-year average of the equivalent ending balances in the baseline years. State law requires an automatic transfer of excess state revenue above the certified forecast to the Cash Reserve Fund, resulting in a transfer of $1.3 billion in the 2023 reporting year. An additional $50 million was directed by the 2021 Legislature to be transferred into the Cash Reserve Fund to preserve the balance which was below the targeted 16% of operating expense threshold at the time and was offset by a corresponding contingent $50 million transfer out of the Cash Reserve Fund related to a proposed US SPACECOM designation. Transfers out of the Cash Reserve Fund in the 2022-23 reporting year included $216.1 million for capital construction projects, $183.5 million for water projects, $100 million for road operations, $70 million for site and housing development, $50 million for rural developments, $30 million for development and support of a U.S. military base, $20 million for intern programs, $18.8 million for the State's indemnification settlement fund, $10 million for economic recovery in disproportionately impact areas, and $10 million for school safety and security. In addition to the automatic transfer from the General Fund to the Cash Reserve Fund, $1 billion will be transferred from the General Fund to the Education Future Fund in FY 2023-24 to provide sustainable increases in future education funding.

The State's 2022 legislative session the passage of LB873, known as the Property Tax Incentive Act, which utilized revenue growth to phase in reductions to the marginal individual income tax rate, the marginal corporate income tax rate, and exemption of Social Security income from individual income taxes. The marginal tax rates were both set to reduce from 7.25% and 6.84% respectively, to 5.84% by 2027. The Social Security income tax exemption was set to increase from 40% to 100% by 2025. The bill also increased the available Property Tax Incentive Act income tax credits by $375 million and called for annual growth in parity with real property assessed valuation growth up to 5%. These credits are claimed to offset the taxpayers' school district property tax liabilities. An additional expansion to the Property Tax Incentive Act included in the bill phased in credits available for community college property tax liability beginning with $50 million in 2023 and reaching $195 million by 2027. The total impact on the 2023 reporting year is estimated at $115.5 million in revenue loss over the prior year. These tax changes did not impact funding available for education.