

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.

State Colorado

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	\$4,404,643,308	\$858,262,053	\$10,259,086,811
FY 2018	\$4,418,191,124	\$888,734,750	\$11,766,617,899
FY 2019	\$4,776,326,580	\$965,452,138	\$13,193,849,610
FY 2020	\$4,944,852,642	\$1,091,916,907	\$13,082,629,964
FY 2021	\$4,569,171,395	\$594,604,146	\$
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

- FY21 appropriations were based on economic forecasts made in May 2020, predicting dramatic declines in state revenue. As detailed in Table 1 below, relative to forecasts made in September and December of 2019 and March of 2020, May forecasts predicted a decrease in revenue of between \$2.38 billion and \$2.86 billion (-18.2% to -21.0%).¹

In response, Colorado's General Assembly passed legislation to temporarily decrease the statutory General Fund reserve from 7.25% to 3.07% in FY2020 and 2.86 for FY2021. As shown in Table 2, this reduced General fund reserves by \$467.9 million in FY21.²

- Despite the dramatic decline in expected revenue, Colorado recognized the need for increased spending on public health given the challenges of combating COVID-19. As shown in Table 3 below, the FY2019 budget increased both the total amount of funding and the amount of funds from the General Fund relative to both FY2017 and FY2018 in order to respond to the public health crisis. For FY2020, public health funding remained at a higher level than in both FY2017 and FY2018.
- As shown in Figure 1, total employment in Colorado fell from 2,819,000 in February of 2020 to 2,443,200 in April of 2020, a decline of over 13%.³ During the same period, the unemployment rate more than quadrupled, rising from 2.8% to 12.1% as shown in Figure 2.⁴

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).

Figure 1: Total Employment

¹ https://leg.colorado.gov/sites/default/files/fy20-21apprept_0.pdf pg. I-2

² https://leg.colorado.gov/sites/default/files/fy20-21apprept_0.pdf pg. I-7

³ <https://fred.stlouisfed.org/series/CONA>

⁴ <https://fred.stlouisfed.org/series/COUR>



Figure 2: Unemployment:

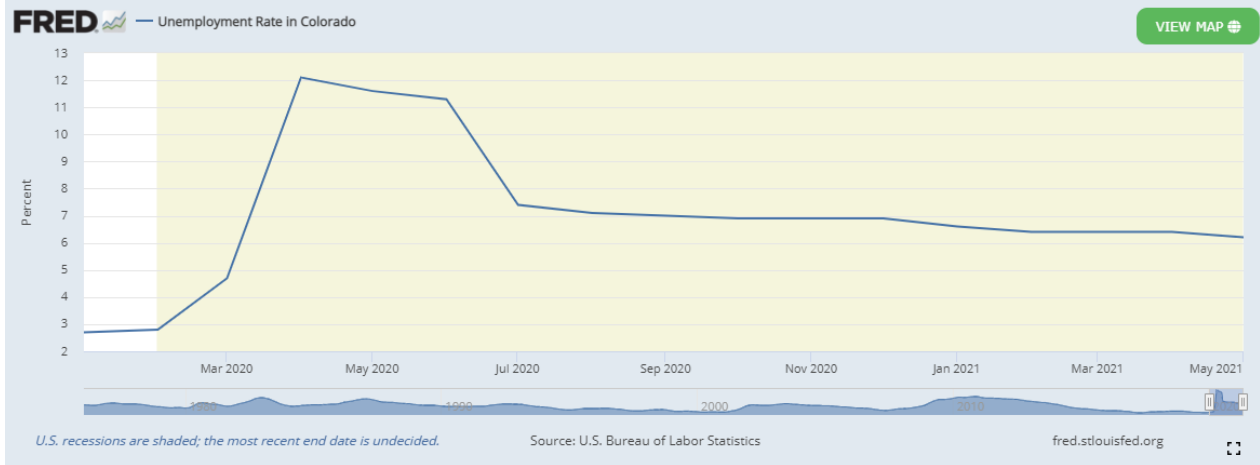


Table 1: Forecasted Revenue

	FY 2019-20		FY 2020-21		CUMULATIVE TOTAL	
	LCS	OSPB	LCS	OSPB	LCS	OSPB
September 2019	\$12,953.5	\$13,096.4	\$13,309.0	\$13,617.0	\$26,262.5	\$26,713.4
December 2020	12,942.7	13,009.4	13,475.1	13,528.0	26,417.8	26,537.4
March 2020	12,546.6	12,713.2	12,725.1	13,136.0	25,271.7	25,849.2
May 2020	11,653.8	11,630.1	10,306.6	10,755.0	21,960.4	22,385.1
Decrease from September 2019 to May 2020	(\$1,299.70)	(\$1,466.30)	(\$3,002.4)	(\$2,862.0)	(\$4,302.1)	(\$4,328.3)
Percent Decrease	-10.0%	-11.2%	-22.6%	-21.0%	-16.4%	-16.2%

"LCS" refers to the Colorado Legislative Council Staff's [Economic and Revenue Forecast](#).

"OSPB" refers to the Governor's Office of State Planning and Budgeting's [Colorado Economic and Fiscal Outlook](#).

Source: https://leg.colorado.gov/sites/default/files/fy20-21apprept_0.pdf pg. I-2

Table 2: General Fund Reserves:

As detailed in Table 6, based on existing appropriations this bill reduces the required General Fund reserve by \$494.9 million for FY 2019-20 and by \$467.9 million for FY 2020-21.

	FY 2019-20	FY 2020-21
General Fund Appropriations (Excluding Rebates and Expenditures)	\$11,840.3	\$10,658.5
Applicable Percentage to be applied to General Fund Appropriations (current law)	7.25%	7.25%
Required Statutory Reserve (prior to HB 20-1383)	\$858.4	\$772.7
Applicable Percentage to be applied to General Fund Appropriations After Passage of HB 20-1383	3.07%	2.86%
Required Statutory Reserve (with HB 20-1383)	\$363.50	\$304.8
Change to Reserve Due to HB 20-1383	(\$494.9)	(\$467.9)

Source: https://leg.colorado.gov/sites/default/files/fy20-21apprept_0.pdf pg. I-7

Table 3: Appropriations to Department of Public Health

FUNDING SOURCE	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
General Fund ^{1,2}	\$48,798,277	\$52,128,667	\$62,733,564	\$59,958,515
Cash Funds	188,457,556	192,656,016	206,351,030	188,149,625
Reappropriated Funds	45,239,889	47,439,428	49,385,559	49,047,028
Federal Funds	297,512,266	299,022,334	301,861,481	300,970,024
TOTAL FUNDS	\$580,007,988	\$591,246,445	\$620,331,634	\$598,125,192
Full Time Equiv. Staff	1,336.0	1,346.1	1,384.6	1,397.0

¹ Includes appropriations from the CARE subfund of the General Fund for FY 2019-20 and FY 2020-21.

² Includes General Fund Exempt.

Source: https://leg.colorado.gov/sites/default/files/fy20-21apprept_0.pdf pg. II-155

- 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.

Prior to the pandemic, State support for elementary and secondary education increased every recent fiscal year, from \$4.40 billion in FY2017 to \$4.97 billion in FY2020.⁵ Similarly, state support for higher education increased every recent fiscal year, from \$858.3 million in FY2017 to \$1.09 billion in FY2020.⁶

Due to budget cuts brought on by the previously described forecasted revenue drops, support to higher education fell to \$594,604,146 million in FY2021 and support to education fell to \$4,569,171,395. However, Colorado has prioritized restoring these cuts as our economy has recovered. For FY2022, Colorado will appropriate over \$1.2 billion⁷ to higher education support (a 10% increase from FY2020) and will appropriate \$4.62 billion to K-12

⁵ Level of State support for elementary and secondary education was determined through the sum of the State's Share of Public School Finance for each fiscal year plus the State's funding for Categorical education programs that occur outside of the School Finance formula and serve particular groups of students or particular student needs.

⁶ Level of State support for higher education equals the sum of Need-Based Grants, Work Study, the Fort Lewis College Native American Tuition Waiver, Tuition Assistance for Career and Technical Education Certificate Programs, College Opportunity Fund stipends, fee-for-service contracts with state institutions pursuant to Section 23-18-303, C.R.S., fee-for-service contracts with state institutions for special education programs, General Fund appropriations for local district college grants, General Fund appropriations for Area Technical Colleges, nonappropriated revenue from the Tobacco Litigation Settlement Moneys Health Education Fund, and limited gaming tax revenues distributed pursuant to Section 12-47.1-701.5 (3)(c)(I), C.R.S.

⁷ Calculated using the same methodology described above.

education support.

Colorado dedicated significant amounts of funds received through the CARES act to higher education. These funds are not being used to replace existing State commitments to higher education/education. Funds were primarily dedicated to aiding schools and higher education institutions respond to and mitigate challenges associated with the pandemic. As demonstrated by the increased funding appropriated to both higher education and education in FY2021, any remaining funds, as well as additional funding received through ARP, will not be used to supplant state funding for higher education. Table 4 below shows how funds from the CARES act were allocated to higher education and education through the Coronavirus Relief Fund, as laid out by Executive Order D 2020 070.

Table 4: CARES ACT CRF allocations to higher education and education

Amount	Department receiving funds	Fiscal Year	Funding uses
\$37,000,000	Education	FY21	Expenditures incurred to respond to second-order effects of the COVID-19 emergency, in particular the increased number of at-risk pupils due to the COVID-19-driven recession.
\$510,000,000	Education	FY20	Expenditures associated with actions to facilitate compliance with COVID-19-related public health measures, including facilitating distance learning and social distancing for in-person contact hours, mitigating lost learning, and the provision of economic support in connection with the COVID-19 emergency to stimulate the economy by supporting Colorado’s workforce through increasing free instructional hours for our kindergarten through 12th grade education system.
<i>Department of Education subtotal: 547,000,000</i>			
\$450,000,000	Higher Education	FY20	Expenditures associated with actions to facilitate compliance with COVID-19-related public health measures and with the provision of economic support in connection with the COVID19 emergency to stimulate the economy by supporting Colorado’s workforce through increasing student retention and completions at state institutions of public higher education. ⁸
<i>Department of Higher Education subtotal: \$450,000,000</i>			
Grand Total: \$1,002,000			

⁸ Institutions receiving this aid committed to undergraduate tuition raises of no more than 3% for FY21.

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.

Allie Kimmel , GEER State Director	413-575-6332
Governor or Chief State School Officer or Authorized Representative (Typed or Printed Name)	Telephone
	7/15/21
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.