



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

October 5, 2023

The Honorable Pedro Pierluisi  
Governor of Puerto Rico  
P.O. Box 9020082  
San Juan, PR 00902

Dr. Yanira Raíces Vega  
Acting Secretary of Education  
Puerto Rico Department of Education  
P.O. Box 190759  
San Juan, PR 00919

Dear Governor Pierluisi and Acting Secretary Raíces Vega:

I am writing in response to the September 1, 2021, request from the Puerto Rico Department of Education (PRDE) to the U.S. Department of Education (Department) for a waiver of the maintenance of effort (MOE) requirements in section 18008(a) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act); section 317(a) of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act); and section 2004(a)(1) of the American Rescue Plan Act of 2021 (ARP Act) with respect to elementary and secondary education and higher education.

As a condition of receiving CARES Act, CRRSA Act, and ARP Act pandemic relief funds under the Education Stabilization Fund, Puerto Rico assured it would maintain effort for both elementary and secondary education and higher education in each of fiscal years (FYs) 2020, 2021, 2022, and 2023. More specifically, section 18008(a) of the CARES Act requires a State that receives Elementary and Secondary School Emergency Relief funds (ESSER I) and Governor's Emergency Education Relief funds (GEER I) for FYs 2020 and 2021 to: 1) maintain State support for elementary and secondary education at least at the levels of such support that is the average of the State's support for elementary and secondary education provided over FYs 2017, 2018, and 2019; and 2) maintain State support for higher education at least at the levels of such support that is the average of the State's support for higher education provided over FYs 2017, 2018, and 2019. Section 317(a) of the CRRSA Act requires that for FY 2022, a State that receives ESSER II, GEER II, and Emergency Assistance to Non-Public Schools (EANS) funds to: 1) maintain State support for elementary and secondary education at least at the proportional level of the State's support for elementary and secondary education relative to the State's overall spending, averaged over FYs 2017, 2018, and 2019; and 2) maintain State support for higher

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education at least at the proportional level of the State's support for higher education relative to the State's overall spending, averaged over FYs 2017, 2018, and 2019. This same MOE requirement applies in FYs 2022 and 2023 for a State that receives ARP ESSER funds, and Section 2004(a)(2) of the ARP Act allows the Department to grant a waiver of the MOE requirement "for the purpose of relieving fiscal burdens incurred by States in preventing, preparing for, and responding to the coronavirus."

Based on PRDE's submission, the State failed to meet MOE requirements for elementary and secondary education by approximately 7.47 percentage points (\$2.7 billion) in FY 2022, and 3.62 percentage points (\$1.2 billion) in FY 2023 compared with the baseline years. The State failed to meet MOE requirements for higher education by approximately \$180 million in FY 2020, \$190 million in FY 2021, 4.19 percentage points (\$1.4 billion) in FY 2022, and 2.45 percentage points (\$766 million) in FY 2023 compared with the baseline years. Based on data provided by PRDE, a waiver of the elementary and secondary education requirements in FYs 2020 and 2021 is unnecessary because Puerto Rico demonstrated compliance on a per-pupil spending basis. Under the authority of section 2004(a)(2) of the ARP Act, I am approving Puerto Rico's request to waive the MOE requirements in section 18008(a) of the CARES Act, section 317(a) of the CRRSA Act, and section 2004(a)(1) of the ARP Act with respect to State support for elementary and secondary education in FYs 2022 and 2023 and for higher education in FYs 2020, 2021, 2022, and 2023 to relieve fiscal burdens incurred by the State.

The Department's approach to MOE waiver requests is rooted in consideration of the impact on students. In reviewing Puerto Rico's request, the Department considered all information and data included, as well as the totality of the circumstances such as multiple fiscal burdens. After accumulating over \$50 billion in unfunded pension liability and over \$70 billion in debt, Congress passed the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) in 2016 to restructure Puerto Rico's debt burden. In 2017, the Oversight Board implementing PROMESA developed a fiscal plan that imposed spending cuts across all sectors, including both elementary and secondary education and higher education, and required spending on debt restructuring. Puerto Rico's Financial Oversight and Management Board indicated that the decreases in higher education spending in FYs 2020 and 2021 were caused by funding cuts imposed by the Oversight Board. Decreased proportional spending on both higher education and elementary and secondary education in FYs 2022 and 2023 were driven by dramatically increased State spending (\$24.7 billion in FY 2022 and \$181 million in FY 2023) on payments made to debt holders as part of Puerto Rico's ongoing debt settlement process. In addition, Puerto Rico incurred significant costs in responding to extreme natural disasters (Hurricanes Irma and Maria in 2017, earthquakes in 2019 and 2020, and Hurricane Fiona in 2022)—responses that were exacerbated by the COVID-19 pandemic.

Despite these fiscal burdens, Puerto Rico made increased investments in both elementary and secondary education as well as higher education. Specifically, Puerto Rico increased State support for elementary and secondary education and higher education on a per-pupil basis in FYs 2022 and 2023 compared to the baseline years. These investments are relevant given the Department's interest in a State's commitment to education spending as outlined in the [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.

Considering the totality of the circumstances, including the State's ongoing commitment to support elementary and secondary education and higher education on a per-pupil basis, as well as the State's demonstration of fiscal burdens incurred in responding to the coronavirus pandemic, the Department determined that approval of the waiver relative to FY 2020, 2021, 2022, and 2023 MOE requirements is appropriate.

Finally, this waiver for FY 2022 MOE requirements is distinct from any determination the Department may make concerning Puerto Rico's compliance with FY 2022 maintenance of equity requirements under the ARP Act (§ 2004(b)). Based on data provided by PRDE, the State has not yet complied with these requirements for 85 high-poverty schools. Puerto Rico must make supplemental payments to these schools, each of which experienced disproportionate per-pupil funding or staffing in FY 2022. Please advise the Department when these additional payments have been made.

Thank you for your ongoing commitment to education. If you have any questions, please contact the Puerto Rico Mailbox at: [PuertoRico.OESE@ed.gov](mailto:PuertoRico.OESE@ed.gov).

Sincerely,

*Laura Jimenez*

Laura Jimenez  
Director  
Office of State and Grantee Relations