



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

May 10, 2024

The Honorable Jim Pillen  
Governor of Nebraska  
State Capitol  
1526 K Street  
Lincoln, NE 68509-4848

The Honorable Brian L. Maher  
Commissioner of Education  
Nebraska Department of Education  
500 S. 84th Street  
Lincoln, NE 68510-2611

Dear Governor Pillen and Commissioner Maher:

I am writing in response to the Nebraska Department of Education's March 15, 2024, request to the U.S. Department of Education (Department) for a waiver of the fiscal year (FY) 2023 maintenance of effort (MOE) requirements under the American Rescue Plan Act of 2021 (ARP Act).

As a condition of receiving Elementary and Secondary Emergency Relief (ESSER) funds under the ARP Act, Nebraska assured it would maintain effort, as defined in the ARP Act, for both elementary and secondary education and higher education in each of FYs 2022 and 2023. More specifically, for each FY, section 2004(a)(1) of the ARP Act requires a State that receives ARP ESSER funds to maintain State support for: 1) 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) higher 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. Section 2004(a)(2) of the ARP Act allows the Department to grant a waiver of the MOE requirements "for the purpose of relieving fiscal burdens incurred by States in preventing, preparing for, and responding to the coronavirus."

Under the authority of section 2004(a)(2) of the ARP Act, I am approving Nebraska's request to waive the MOE requirements in section 2004(a)(1) of the ARP Act with respect to State support for elementary and secondary education to relieve fiscal burdens incurred by the State for FY 2023. This determination is based on the totality of the circumstances, including review of Nebraska's waiver request and the fiscal burden the State incurred in responding to the COVID-

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19 pandemic; the Department’s application of the statutory requirements; the Department’s approach to MOE waiver requests as noted in the Frequently Asked Questions document<sup>1</sup>; and consideration of the impact on students.

Based on the information submitted, Nebraska failed to meet the FY 2023 MOE requirement for elementary and secondary education by 2.58 percentage points (a \$106.5 million shortfall). Nebraska noted that the decrease in proportional education spending was due to increases in overall State spending on health care, correctional services, and aid to local governments.

In determining whether to grant a State an MOE waiver, we may consider factors such as increased State support for education. Nebraska submitted data showing it increased overall support for elementary and secondary education from an average of \$1,317,578,466 in the baseline years to \$1,427,464,462 in FY 2023. Nebraska also increased FY 2023 per-pupil spending compared to the baseline for elementary and secondary education by 6.2 percent, or \$268 per student. Finally, Nebraska demonstrated a commitment to State support for elementary and secondary education beyond FY 2023 including \$333 million in supplemental spending in FY 2024, as noted in the State’s waiver request.<sup>2</sup> This supplemental appropriation is larger than Nebraska’s shortfall for FY 2023 as calculated under the ARP Act MOE requirement.

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

Sincerely,

*Laura Jimenez*

Laura Jimenez  
Director, Office of State and Grantee Relations

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<sup>1</sup> [https://oese.ed.gov/files/2022/09/8.15.22-Update\\_MOE-Chart-with-waiver-FAQs-Rounding-and-Appendices-Updated1.pdf](https://oese.ed.gov/files/2022/09/8.15.22-Update_MOE-Chart-with-waiver-FAQs-Rounding-and-Appendices-Updated1.pdf)

<sup>2</sup> <https://oese.ed.gov/files/2024/04/Nebraska-ARPA-MOE-Waiver-Final-Signed-1.pdf>