



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

June 20, 2024

The Honorable Andy Beshear
Governor of Kentucky
700 Capitol Ave., Suite 100
Frankfort, KY 40601

The Honorable Robin Fields Kinney
Interim Commissioner of Education
Kentucky Department of Education
300 Sower Blvd., 5th Floor
Frankfort, KY 40601

Dear Governor Beshear and Commissioner Kinney:

I am writing in response to the Kentucky Department of Education's March 14, 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, Kentucky assured it would maintain effort, as defined in the ARP Act, for both elementary and secondary education and higher education in 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 Kentucky's request to waive the MOE requirements 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 in FY 2023. This determination is based on the totality of the circumstances, including review of Kentucky's waiver request and the fiscal burden the State incurred in responding to the COVID-19 pandemic; the Department's application of the statutory requirements; the Department's

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approach to MOE waiver requests as noted in the Frequently Asked Questions document¹; and consideration of the impact on students.

Based on the information submitted, Kentucky failed to meet the FY 2023 MOE requirement for elementary and secondary education by 7.1 percentage points (a \$945.6 million shortfall). Kentucky noted that the decrease in proportional education spending was due to increases in overall State spending on Medicaid costs, unemployment insurance benefits, and natural disaster recovery.

In determining whether to grant a State an MOE waiver, we may consider factors such as increased State support for education. Kentucky submitted data showing it increased overall support for elementary and secondary education from an average of \$5,219,706,861 in the baseline years to \$5,618,771,656 in FY 2023. Kentucky also increased FY 2023 per-pupil spending compared to the baseline for elementary and secondary education by 9 percent, or \$757 per student. Kentucky also demonstrated a commitment to State support for elementary and secondary education beyond FY 2023. Specifically, Kentucky increased base school foundation formula funding per-pupil from \$4,000 to \$4,200, generating an additional \$122.9 million in elementary and secondary education funding in FY 2024 compared to the previous biennium. Kentucky also made additional investments in school infrastructure and school employee health benefits.

Thank you for your ongoing commitment to education. If you have any questions, please contact the Kentucky State mailbox at Kentucky.OESE@ed.gov.

Sincerely,

Laura Jimenez

Laura Jimenez
Director, Office of State and Grantee Relations

¹ https://oese.ed.gov/files/2022/09/8.15.22-Update_MOE-Chart-with-waiver-FAQs-Rounding-and-Appendices-Updated1.pdf