



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE UNDER SECRETARY

July 19, 2021

Mr. Peter McPherson
President
Association of Public and Land-grant Universities
1220 L Street, NW, Suite 1000
Washington, DC 20005

Dear Mr. McPherson:

Thank you for your April 1, 2021, letter to U.S. Secretary of Education Miguel Cardona sharing your concerns about the maintenance of effort requirements in the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA), and American Rescue Plan (ARP) Act of 2021. Your letter has been forwarded to the Under Secretary's office, and I am pleased to respond. An identical response has been provided to the co-signers of your letter.

Congress provided unprecedented funding to support State and local governments and invest in PreK-12 and higher education through multiple COVID-19 relief laws. That funding was not, however, meant to substitute for States taking responsibility and funding their educational systems, including higher education institutions. As a condition of receiving federal pandemic relief funds, each State assured that it would maintain effort for both elementary and secondary education and higher education. *See* sections 18008(a) of the CARES Act, 317(a) of Division H of the CRRSAA, and 2004(a)(1) of the ARP Act of 2021.

Although a State may request a waiver of the maintenance of effort (MOE) requirements under the Elementary and Secondary School Emergency Relief (ESSER) Fund and the Governor's Emergency Education Relief (GEER) Fund (see section 2004(a)(2) of the ARP Act), the Department's approach to MOE waiver requests will be rooted in the consideration of "the impact on students."⁵ As noted in question 8 of the Department's MOE guidance issued on April 20, 2021, one factor that the Secretary may consider when determining whether to grant a waiver is whether a State has "used or will...use ESSER, GEER, or Higher Education Emergency Relief (HEER) funding to replace State funding for education." The Department may also consider whether a State has "previously used any ESSER, GEER, or HEER funds to replace State funding for education." I can assure you that the Department will be looking carefully at any requests that we receive for waivers of MOE requirements to ensure the law is faithfully carried out and that students are protected.

⁵ 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, U.S. Department of Education, April 2021, https://oese.ed.gov/files/2021/04/MOE-Chart_with-waiver-FAQs_FINAL_4.21.21Update.pdf

We are also closely monitoring the ongoing education budget actions of States and providing technical assistance to States when necessary to ensure all States maintain effort. We will continue to ensure transparency into MOE requirements by updating the data on State expenditures on education through our Education Stabilization Fund Transparency Portal at covid-relief-data.ed.gov. States' waiver requests will also be made public and may be found on our website.⁶

Thank you for raising these important issues. If you have future questions or concerns about the MOE requirements, please do not hesitate to contact us again.

Sincerely,

A handwritten signature in black ink that reads "Julie Margetta Morgan". The signature is written in a cursive style with a large initial "J".

Julie Margetta Morgan
Senior Advisor to the Under Secretary
Delegated the authority to perform the function and
duties of the Under Secretary

⁶ American Rescue Plan Performance and Reporting, Office of Elementary and Secondary Education, U.S. Department of Education, <https://oese.ed.gov/offices/american-rescue-plan/american-rescue-plan-elementary-and-secondary-school-emergency-relief/performance-and-reporting/?key=60afa68a88c06>