



## Legislative Fiscal Bureau

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TO: Senator Jon Erpenbach  
Room 130 South, State Capitol

FROM: Christa Pugh, Fiscal Analyst

SUBJECT: Maintenance of Effort Requirements Under Federal Coronavirus Acts

At your request, I am providing information about maintenance of effort requirements under federal coronavirus acts.

### Background

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, which was enacted by the federal government on March 27, 2020, created an education stabilization fund that provided funding for institutions of higher education and K-12 schools. Additional funding was provided under the Consolidated Appropriations Act (CAA), which was enacted on December 27, 2020, and the American Rescue Plan Act (ARPA), which was enacted on March 11, 2021. The table below shows total funding allocated to Wisconsin in elementary and secondary school emergency relief (ESSER) funds, governor's emergency education relief (GEER) funds, and emergency assistance to nonpublic schools (EANS) funding under the three acts.

### Wisconsin K-12 Funding Under CARES Act, CAA, and ARPA (\$ in Millions)

	<u>CARES Act</u>	<u>CAA</u>	<u>ARPA</u>	<u>Total</u>
Elementary and Secondary School Emergency Relief	\$174.8	\$686.1	\$1,540.8	\$2,401.7
Governor's Emergency Education Relief*	46.6	20.8	0.0	67.4
Emergency Assistance for Nonpublic Schools	<u>0.0</u>	<u>77.5</u>	<u>73.9</u>	<u>151.4</u>
	\$221.4	\$784.4	\$1,614.7	\$2,620.5

\*Excludes Emergency Assistance for Nonpublic Schools; CARES Act GEER moneys were allocated to K-12 education, but the allocation of the CAA GEER moneys has not yet been determined.

## **Maintenance of Effort Requirement - Total Dollars**

Under the CARES Act, each state receiving funds must maintain state support for K-12 and higher education in 2019-20 and 2020-21 equal to the average level of support in the 2016-17, 2017-18, and 2018-19. This provision requires that a minimum dollar amount be spent on K-12 and higher education, based on historical state spending. ESSER I totaling \$174.8 million and GEER I funds totaling \$46.6 million are subject to this requirement. It is anticipated that Wisconsin will meet the CARES Act maintenance of effort requirement.

## **Maintenance of Effort Requirement - Proportion of Total State Spending**

A proportional maintenance of effort requirement applies to the CAA and ARPA. Under the CAA, the proportion of state spending allocated to K-12 and higher education in 2021-22 must be maintained at the same level as the state's average allocation in the 2016-17, 2017-18, and 2018-19 fiscal years as a condition of receiving ESSER II funds (\$686.1 million), GEER II funds (\$20.8 million), or EANS funds for private schools (\$77.5 million).

ARPA includes the same requirement applicable to both 2021-22 and 2022-23 as a condition of receiving the \$1,540.8 million allocated to the state under ESSER III. EANS funding under ARPA is not subject to the maintenance of effort requirement.

Whether or not the state meets these requirements will depend on future decisions made in the 2021-23 budget and other legislation.

## **Waivers**

Under the federal acts, states may request a waiver from the maintenance of effort requirements. ARPA allows the Secretary of Education may waive the requirements "for the purpose of relieving fiscal burdens incurred by states in preventing, preparing for, and responding to the coronavirus."

Federal guidance indicates that in seeking a waiver, a state must submit the following information: (a) data substantiating the levels of state support for elementary and secondary education and for higher education for any fiscal year for which a waiver is requested; (b) data substantiating the state's overall spending or data on appropriated or allocated amounts available for state spending; (c) a description of the extent to which the state experienced fiscal burdens as a result of 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; (d) documentation and data supporting the description of the state's fiscal burdens, including any state actions that impacted state revenue; and (e) information on other relevant factors, including whether the state increased the dollar amount of its support for education over time, if there are exceptional circumstances that caused the state to be unable to maintain support for education, and whether the state used federal ESSER, GEER, or higher education funding to replace state funding for education.

The federal guidance indicates that a state may request a waiver of the maintenance of effort requirements under the CAA or ARPA when the state can fully demonstrate that it has failed to meet

the requirement using expenditure data to document state spending for the applicable fiscal year. A state can request a preliminary waiver using projected data and could receive a preliminary approval, conditional on an assurance that the state will not subsequently decrease its level of state support for elementary and secondary education or higher education as demonstrated in the original waiver request.

I hope this information is helpful. Please contact me if you have additional questions.

CP/ml