

MEMORANDUM

TO: Governor Laura Kelly
Kansas Senate
Kansas House of Representatives

FROM: Adam Proffitt, Director of the Budget

DATE: May 2, 2021

SUBJECT: Education Funding Federal Relief MOE Shortfall

- The two most recent federal relief packages (CRRSA and ARPA) contain methodology for calculating maintenance of effort thresholds for education, which are different than that of the original MOE calculations in the CARES Act
- As a result, current Kansas budget is falling short of federal MOE requirements related to Higher Education spending, putting federal dollars for both K-12 and Higher Education at risk of recoupment
- The Division of the Budget recommends increasing funding for Higher Education in the Omnibus bill by \$53mil for FY 2022, plus incremental funding increase in FY 2023
- Increased funding for Higher Education in this amount likely to mitigate risk of recoupment of federal dollars for both Higher Education and K-12

Synopsis:

The United States Department of Education (USDE) held a federal funding FAQ call for states on Friday, April 23rd, where they communicated an understanding of USDE's interpretation of states' maintenance of effort (MOE) requirements relative to federal relief dollars for both K-12 and Higher Education. During this call, USDE informed states that, although MOEs for K-12 and Higher Education are to be submitted and reviewed separately, USDE has authority to impose penalties on both sets of federal dollars if a state is to miss their MOE for either entity. Stated differently, **if Kansas is to miss our MOE for Higher Education (which we anticipate we will with the current budget), then USDE can reduce our federal award for both Higher**

Education and K-12. This memo will lay out for you the issue in greater detail, the potential penalties that the state could incur, and my recommendation for remediation.

Issue:

According to the MOE calculation language in CRRSA and the ARPA, Kansas is currently falling short of our MOE for Higher Ed, related to the amount of state support that we are providing to them. The exact amount that we are short is unknown, but the range is between \$85mil and \$105mil. The amount that USDE considers as funding is rather prescriptive/complex and excludes funding for items such as capital projects and research & development. Additionally, since it is based on a percent of total state expenditures, the number is fluid until the full state budget is finalized. The reason we are missing our MOE is because our total SGF expenditures have increased at a greater clip than our Higher Ed expenditures over the past 5 years. Therefore, even though we have increased our total funding for Higher Ed relative to the base years, the percent of state support dedicated to Higher Ed has decreased during that time.

Genesis of Issue:

USDE has had MOE requirements to ensure that states continue to fund K-12 and Higher Ed at levels in line with historical funding, in order to receive federal dollars for both entities. However, the way in which the MOE is calculated changed between the first round of federal guidance under the CARES Act to the more recent guidance that is contained in CRSSA and ARPA.

For the **CARES Act**, the state's application for funds (both Higher Ed and K-12) assures the federal government that the state support for K-12 & Higher Ed (excluding capital projects, research & development, as well as tuition) in FY 2020 and FY 2021 in a **dollar amount** that is at least the average of the state's support for FY 2017 through FY 2019.

For **CRRSA/ARPA**, the state's application for funds requires that it will maintain support for K-12 and Higher Ed in FY 2022 and FY 2023 in a **percentage amount**—specifically at least the proportional levels of the state's support for K-12 and Higher Ed relative to overall spending averaged over FY 2017 through FY 2019. This MOE applies to ESSER II & III, GEER II & III, and all EANS programs.

When the state calculates its MOE for Higher Ed and K-12 under the methodology prescribed by the CARES Act (on a dollar basis), then we meet the MOE for both entities. However, when we calculate the MOE under the more recent methodology (on a percent of SGF basis), then we fall short of the Higher Ed MOE. It should be noted that if we were to combine our MOE submission (K-12 and Higher Ed funding together), then we would meet the MOE; it is only Higher Ed on its own that does not meet the guidelines on a percent of SGF basis. The percent of state support dedicated to Higher Ed during the base years was approximately 10.4%; this is the threshold that we must meet in order to be in compliance with our MOE. Our current budget allocates between 9.1% - 9.5% of state support to Higher Ed, depending on what is included in the calculation, leaving us up to \$105mil short of the MOE requirements.

Potential Penalty:

If Kansas is to be found out of compliance with the MOE for **either** Higher Ed or K-12, then it risks losing federal funding for **both** K-12 **and** Higher Ed. The recoupment is not limited to the amount that Kansas is short on their MOE – the recoupment could potentially exceed the amount by which we miss our MOE. Conversely, the penalty provision language is not prescriptive; this means that, while USDE has full authority to enforce a host of penalties, they are not required to do so, if they feel a state made a good faith effort or demonstrate other mitigating circumstances that led them to be out of compliance. While we believe that USDE is prepared to err on the side of granting flexibility to states based on their individual circumstances, we will have the potential for recoupment looming over our federal funds availability if we do not meet our MOE.

Recommendation:

My recommendation is to incrementally increase our SGF appropriation for Higher Ed by \$53mil for each of the next two fiscal years; this would be **an increase of \$53mil for FY 2022 and \$106mil for FY 2023**, which would put us in compliance with the MOE standards by the end of the measuring period. We would **simultaneously seek a waiver from USDE for missing our MOE in the first reporting year, seeking relief from recoupment of federal dollars**. This recommendation is intended to demonstrate a path to compliance by significantly increasing the level of state support dedicated to Higher Ed over the next two years, while also requesting flexibility from USDE for the time it takes to become compliant, given the size of the investment required from the state. I believe that, with this recommendation, USDE will recognize that Kansas is committed to funding Higher Ed, as is evidenced by the increases in SGF support over the past four years, but they will still want us to show a commitment to meeting the MOE standards of maintaining proportional funding for Higher Ed, in order to receive federal support.

It is my opinion that this recommendation is the best path forward for Kansas, because it 1) greatly reduces the state's exposure to risk of recoupment of future federal dollars, and 2) demonstrates the state's commitment to fully funding education at all levels. By having a two-year roadmap to meeting minimum federal funding standards, we are being fiscally responsible, while also maximizing the state's share of federal dollars for their intended use.