Legislative Fiscal Bureau

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January 25, 2022

TO: Members
Wisconsin Legislature

FROM: Bob Lang, Director

SUBJECT: Update on K-12 Maintenance of Effort and Maintenance of Equity Requirements Under Federal Coronavirus Acts

This memorandum provides information about the K-12 maintenance of effort and maintenance of equity under the federal coronavirus acts, with updates based on the revenue and expenditure reestimates provided by this office on January 25, 2022.

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)

	CARES Act	CAA	ARPA	Total
Elementary and Secondary School Emergency Relief	$174.8	$686.1	$1,540.8	$2,401.7
Governor's Emergency Education Relief*	46.6	0.0	0.0	46.6
Emergency Assistance for Nonpublic Schools	0.0	77.5	73.9	151.4
	$221.4	$763.6	$1,614.7	$2,599.7

*Excludes $20.8 million in CAA GEER moneys that were allocated to institutions of higher education for coronavirus testing.

Maintenance of Effort

The funding provided for K-12 education under the federal coronavirus acts is subject to a maintenance of effort (MOE) requirement. Under the MOE requirement, the proportion of state expenditures on K-12 and higher education in 2021-22 and 2022-23 must meet a minimum threshold based on the average of expenditures in the 2016-17, 2017-18, and 2018-19 fiscal years.

The Department of Administration (DOA) submitted baseline state and education expenditures data to the federal government on May 17, 2021. In the documentation submitted by DOA, state spending is defined as including all GPR expenditures, excluding transfers, as shown in the state's annual fiscal report. Total K-12 spending includes actual expenditures on general aids, GPR categorical aids, and funding for the state's choice and charter programs, less lapses made to offset costs of the choice and charter programs. For the higher education calculation, GPR expenditures for the UW System, the Wisconsin Technical College System, and need-based financial aid under the Higher Educational Aids Board are included, excluding funding for UW debt service and UW research, plus UW SEG funding. For all three programs, actual expenditures are used, so funds that are appropriated but not expended are not included in the calculations. Based on the methodology used by DOA in its May 17, 2021, submission, this office estimated that the state would meet the CAA and ARPA maintenance of effort requirements based on the appropriated amounts in 2021 Act 58.

A number of the reestimates described in this office's January 25, 2022, memorandum relating to revenue and expenditure estimates affect estimated GPR expenditures, K-12 expenditures, and higher education expenditures, and therefore impact the calculation of the MOE. Based on these reestimates, it is estimated that in 2021-22, K-12 expenditures will exceed the amount required to meet the MOE by $136 million and higher education expenditures will exceed the amount required by $36 million. As a result, total GPR expenditures could be increased by up to $387 million in 2021-22 without additional K-12 or higher education expenditures while remaining in compliance with the MOE.

In 2022-23, it is estimated that K-12 expenditures are lower than required to meet the MOE by $5 million. Higher education expenditures in the same year are $0.1 million higher than required. Therefore, in order to meet the requirement, additional funding for K-12 and higher education would be needed if the Legislature increases GPR expenditures in other areas of the budget, and further adjustments could be needed in 2022-23 depending on actual expenditures in that year. Based on current estimates, a reduction in total GPR expenditures of $16 million or an increase in expenditures of $10 million GPR for K-12 education and $1 million GPR for higher education could be needed. This office will continue to monitor the MOE requirement and will provide an additional update with our revenue reestimates in January, 2023, when more information about 2022-23 expenditures will be known. Additionally, the $202.4 million GPR set aside in Act 58 for the repeal of the personal property tax in 2022-23 was included in the MOE calculations, and if the full amount is not allocated for the personal property tax repeal, this would reduce MOE funding requirements. Another factor that could reduce overall GPR expenditures in 2022-23 would be if a further extension of the enhanced federal Medicaid matching rate is made. If so, the resulting reduction in overall GPR expenditures would reduce the amount of MOE funding otherwise needed.

It should be noted that these amounts are based on current estimates of education and total GPR spending. Sum sufficient appropriations included in total GPR spending could be higher or lower than estimated; if higher, the amount of excess funding identified above could be lower than currently estimated. The state could also be closer to the limit if some of the funding appropriated to K-12 or higher education is not expended and lapses to the general fund.

Maintenance of Equity

ARPA includes a maintenance of equity requirement that applies to local educational agencies (LEAs) identified as high-need or highest poverty. The act defines high-need LEAs as those that meet the following criteria: (a) in rank order, have the highest percentages of economically disadvantaged pupils on the basis of the most recent data available from the U.S. Census Bureau's Small Area Income and Poverty Estimates (SAIPE); and (b) collectively serve not less than 50 percent of the state’s total enrollment of pupils served by all LEAs in the state. Under the maintenance of equity requirements, each state is prohibited from reducing the per pupil amount of state funding for any high-need LEA by an amount that exceeds the overall per pupil reduction in state funding, if any, across all LEAs in the state in 2021-22 or 2022-23 compared to the prior year. For states that did not enact an overall per pupil reduction in state funding, the change in state funding for each high-need LEA must be greater than or equal to zero in each year.

ARPA defines highest poverty LEAs as those that meet the following criteria: (a) in rank order, have the highest percentages of economically disadvantaged pupils based on SAIPE data; and (b) collectively serve not less than 20 percent of the state’s total enrollment of pupils served by all LEAs in the state. For highest poverty LEAs, a state may not reduce the per pupil amount of state funding in 2021-22 or 2022-23 below the per pupil amount provided to the LEA in 2018-19.

A federal guidance document published by the U.S. Department of Education (USDE) on October 1, 2021, indicates that states that include local revenues such as property taxes as a portion of the state's base funding for education can consider those local revenues to be state funds for the purpose of the maintenance of equity calculations. In baseline data submitted to USDE, DPI defines per pupil amount of state funding as the "controlled revenues per revenue limit member." This figure is the current year revenue limit per pupil for a district after consideration of the per pupil, low revenue, and prior year base hold harmless adjustments, but before consideration of other adjustments, such as the declining enrollment adjustment, or any levies outside of revenue limits.

Maintenance of equity requirements also apply to LEAs receiving ARPA funds with regards to high poverty schools (defined as schools in the highest quartile of schools served by the LEA based on the percentage of economically disadvantaged pupils in the school). In 2021-22 and 2022-23, an LEA cannot reduce per-pupil state and local funding for a high poverty school located within the LEA by an amount that exceeds the total reduction, if any, in per-pupil funding for all schools served by the LEA, or reduce the number of full-time equivalent (FTE) staff per pupil in a high poverty school by an amount that exceeds the total reduction, if any, in FTE staff per pupil in all schools served by the LEA. Certain LEAs, including those with fewer than 1,000 pupils and those that operate a single school, are exempted from these requirements.

ARPA does not provide for a waiver from state-level maintenance of equity requirements. The act indicates that maintaining compliance with maintenance of equity requirements is a condition of receiving funds under ESSER III. USDE has indicated that penalties could include recovering funds or withholding remaining funds allocated to public and private schools under any of the federal coronavirus acts.

Status of Maintenance of Equity in 2021-22

For the 211 school districts identified as high-need according to the process defined in ARPA and described above, the difference between controlled revenues per pupil in 2020-21 and 2021-22 must be greater than or equal to zero. Controlled revenues decreased between the two years for 21 districts by amounts ranging from $6 per pupil to $425 per pupil. In total, the amount of controlled revenue received by the identified LEAs in 2021-22 is approximately $1.7 million below the amount required to meet the maintenance of equity requirement.

For the 82 districts identified as highest poverty, the difference between controlled revenues per pupil in 2021-22 compared to 2018-19 must be greater than or equal to zero. Based on this methodology, there is one district with a decrease in controlled revenues equal to $445 per pupil. In total, the amount of controlled revenue received by the identified LEA in 2021-22 is approximately $70,000 below the amount required to meet the maintenance of equity requirement.

Although the difference in amount of controlled revenue per pupil is less than zero for the districts identified above, in its baseline data submission to USDE, DPI indicated that under Wisconsin state law, uniform per pupil and low revenue adjustments are provided to all districts under revenue limits. The differences between districts are attributable to other adjustments and factors inherent in the revenue limit formula, rather than to decisions made to benefit or harm certain districts. Based on this reasoning, federal maintenance of equity requirements prohibit a state from reducing funding for high-need and highest poverty districts, and Wisconsin has not taken any action to do so. Although final determination will be made by USDE, it is anticipated that the state will be found to be in compliance with the maintenance of equity requirement.

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