CARES Act Analysis  
H.R. 748

Overview

The CARES Act is the third relief package passed by Congress in response to the COVID-19 outbreak. The first relief package, enacted on March 3, 2020, provides $8.3 billion for small business loan subsidies and for health agencies and COVID-19 testing (H.R. 6074). The bill does not include provisions related to education. The second bill includes sick leave tax credits for employers and funding for unemployment benefits and nutritional assistance. The President signed the $100 billion bill on March 18 (H.R. 6201). The bill grants the U.S. Department of Agriculture (USDA) waiver authority over the Child Nutrition and School Lunch Acts.

The third and largest legislative package, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, includes approximately $2 trillion and was signed on Friday, March 27, 2020. The massive relief package includes checks to households, funding for distressed industries, small business loans and grants, and funding for K-12 and higher education (H.R. 748).

This memo provides analysis of the third Congressional COVID-19 bill and summarizes the implications for school funding. The summary includes how states and districts can use the K-12 education funds provided in the CARES Act, including the conditions for funding; which schools are included; and the timeline for expenditures. The memo answers the following questions:

1. How much money does each state have to draw upon?
2. What, specifically, can the money be used for?
3. Are the funds exclusive to district schools, or do the usual Title I opportunities exist for private schools? What about charter schools?
4. What is the time frame in which the funds need to be allocated and spent?
5. Are there any carve-outs for districts - or is everything targeted to SEAs?
6. What are the legislative next steps?

The analysis draws on the CARES Act legislative language and the attached bill summaries provided by Penn Hill Group and the Council for American Private Education (CAPE):

- Penn Hill Group Summary of Education- and Workforce-related Provisions in COVID-19 Legislative Relief Packages, March 26, 2020
- Council for American Private Education (CAPE) Memo: Congressional Response to COVID-19, March 26, 2020
How much money does each state have to draw upon?

The CARES Act (H.R. 748) includes education-related waiver authority, additional funding for Project SERV ($100 million), and a new **$30.75 billion Education Stabilization Fund** for both K-12 and higher education. The U.S. Department of Education (ED) will distribute **$13.23 billion** from the fund for elementary and secondary schools. ED will distribute the funds to state educational agencies (SEAs) based on each SEA’s share of Elementary of Secondary Education Act (ESEA) Title I funding.

**Funding for ED.** Before the U.S. Department of Education allocates funding from the $30.75 billion Education Stabilization Fund to SEAs and institutions of higher education (IHE), ED will reserve up to ½ percent of the total funding for the outlying areas (in consultation with the Secretary of Interior), ½ percent for Bureau of Indian Education (BIE) schools, and one percent for states with the highest coronavirus burden. ED must issue funds to these states within 60 days.

**Governor’s Emergency Education Relief Fund ($2.95 billion).** Governors will receive 9.8 percent of the total Education Stabilization Fund. Each Governor’s allocation will be calculated using a formula that is 60 percent based on the state’s population (ages 5 through 24) and 40 percent based on the State’s ESEA Title I child count. Governors can decide how to allocate the funding. The CARES Act indicates that the funds should be used for **significantly impacted LEAs (as deemed by the SEA)**, IHEs or education-related entities to continue to provide educational services, the provision of childcare and early childhood education, social and emotional support, and the protection of education-related jobs.

**Elementary and Secondary School Emergency Relief Fund ($13.23 billion).** SEAs will receive 43.9 percent of the total Education Stabilization Fund, and each state’s allocation will be based on their proportion of Title I funding. States may reserve 10 percent of total funding for SEA activities. SEAs must allocate 90 percent of the total funding to local educational agencies (LEAs). The funding amount for each LEA, including charters that are LEAs, will be calculated based on their share of Title I funding.

From the CARES Act:

> Section 18003. (c) Subgrants To Local Educational Agencies.—Each State shall allocate not less than 90 percent of the grant funds awarded to the State under this section as subgrants to local educational agencies (including charter schools that are local educational agencies) in the State in proportion to the amount of funds such local educational agencies and charter schools that are local educational agencies received under part A of title I of the ESEA of 1965 in the most recent fiscal year.

Of the funding for LEAs, “states may reserve not more than ½ of one percent for administrative costs and the remainder for emergency needs as determined by the state educational agency to address issues responding to coronavirus, which may be addressed through the use of grants or contracts.”
The CARES Act also includes a separate rural development item that provides $25 million for "distance learning." In addition, the law allocates $100 million for Project School Emergency Response to Violence (SERV), “to help elementary, secondary and postsecondary schools clean and disinfect affected schools, and assist in counseling and distance learning and associated costs.”

It should be mentioned that the CARES Act provides $15.5 billion for the Supplemental Nutritional Assistance Program and $8.8 billion for Child Nutrition Programs to help provide meals for students currently not attending schools.

**What, specifically, can the money be used for?**

The Elementary and Secondary School Emergency Relief Fund can be used for activities in response to COVID-19, including technology purchases; internet connectivity; additional assistance for low-income students, English language learners, and students with disabilities; mental health services; school cleaning; summer and supplemental afterschool programs.

The CARES Act specifies 12 uses of the funding in Sec. 18003(d):


2. Coordination of preparedness and response efforts of local educational agencies with State, local, Tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.

3. Providing principals and others school leaders with the resources necessary to address the needs of their individual schools.

4. Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.

5. Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies.

6. Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases.

7. Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency.
(8) Planning for and coordinating during long-term closures, including for how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.) and how to ensure other educational services can continue to be provided consistent with all Federal, State, and local requirements.

(9) Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the local educational agency that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.

(10) Providing mental health services and supports.

(11) Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

(12) Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency.

Are the funds exclusive to district schools, or do the usual Title I opportunities exist for private schools? What about charter schools?

In states where charter schools are considered separate LEAs, the charters will receive the funding directly from the SEA. The law does not specify how LEAs will allocate the funding to schools, so it is unknown how charters schools that are not considered separate LEAs will be allocated funding. If a charter school is currently not receiving Title I funding, it is highly unlikely that they would receive funding from the Elementary and Secondary School Emergency Relief Fund. Perhaps ED will issue guidance on this issue.¹

The CARES Act includes an assistance to non-public schools section specifying that LEAs must use the funds from the Governor’s Emergency Education Relief Fund and the Elementary and Secondary School Emergency Relief Fund to provide non-public

¹ Although a separate issue than funding provided by the law, it should be mentioned that the waiver authority granted by the CARES Act specifies that all approved waivers apply to all public schools, including charter schools within the boundary of the applicable State or LEA.
school students and teachers with equitable services, just as they do with ESEA funds. Items purchased with CARES Act funding will remain under public control.

SEC. 18005. (a) IN GENERAL.—A local educational agency receiving funds under sections 18002 or 18003 of this title shall provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965 to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools.

(b) PUBLIC CONTROL OF FUNDS.—The control of funds for the services and assistance provided to a non-public school under subsection (a), and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property and shall provide such services (or may contract for the provision of such services with a public or private entity).

It appears that a Governor can allocate funds to private schools or charter schools from the Governor’s Emergency Education Relief Fund. The bill specifies that those funds can, “provide support to any other institution of higher education, local educational agency, or education related entity within the State that the Governor deems essential for carrying out emergency educational services to students.”

Private schools, as eligible nonprofit organizations, can benefit from the $350 billion in federally guaranteed loans to small businesses in the CARES Act. Private schools can also benefit from the Family Medical Leave Act (FMLA) expansion and paid sick leave provisions included in the second COVID-19 package passed by Congress.

**What is the time frame in which the funds need to be allocated and spent?**

The CARES Act includes the following timeline for funding allocation:

- The Secretary of Education must issue a notice inviting applications within 30 days of enactment of the bill.
- The Secretary must approve or deny a state’s application within 30 days of receipt.
- The SEAs and Governors must award funds within one year.
- Funds are available at the Federal level for LEAs until September 30, 2021.

According to the Penn Hill Group, the Tydings amendment gives LEAs one additional year to spend the funds.

In a [March 27, 2020 webinar](#) for the charter school community, Penn Hill Group staff mentioned that ED has been moving quickly in response to COVID-19. Based on recent ED activity, they speculated that the funding will flow to SEAs within two to three months.
Are there any carve-outs for districts - or is everything targeted to SEAs?

The Elementary and Secondary School Emergency Relief Fund flows from ED to SEAs to LEAs (and charters considered LEAs) based on existing Title I funding allocations. Funding is not carved out for districts. Governors can allocate funding directly to LEAs from their Governor’s Education Emergency Relief Fund, but that is up to their discretion.

Next Steps

The CARES Act does not include E-Rate funding that would provide broadband internet and internet-connected devices to students. This could be addressed in future legislation.

During a White House press briefing on Friday, March 26, 2020, Education Secretary Betsy Devos proposed the creation of “microgrants” for both students and educators. A spokesperson at ED later stated that, under the proposal, microgrants could be used for technology, internet access, textbooks, tutoring, therapy, or tuition. The proposal would target low-income students and students with disabilities. Next steps for the proposal are unclear at this point.

Congress likely will introduce additional legislation in response to the COVID-19 outbreak. According to The Wall Street Journal, as Congress completed negotiating and voting on the CARES Act, Senate Minority Leader Chuck Schumer (D., N.Y.) stated: “This is certainly not the end of our work here in Congress—rather the end of the beginning.” The Wall Street Journal reports:

Legislators from both parties, administration officials, economists, think tanks and lobbyists are already roughing out the contours of yet another emergency-spending package—perhaps larger than the last—to try to keep the coronavirus crisis from turning into a 21st-century Great Depression. Many expect the debate to begin in earnest by late April.

“There’s talk of a multi-trillion-dollar program, given the size of the shutdown,” says Stephen Moore, a fellow at the conservative Heritage Foundation.
Appendix

COVID-19 Stimulus Information Sources

Map: Coronavirus and School Closures

Overview of the latest Congressional stimulus action
https://public.tableau.com/views/COVIDResponse/COVIDTracker2020?%3AshowVizHome=no#2

Money for technology, cleaning, summer learning: What the coronavirus stimulus means for schools

What the Coronavirus Aid Bill Trump Signed Does for Education, in One Chart
MEMORANDUM

TO: Interested Parties
FROM: Penn Hill Group
DATE: March 26, 2020
SUBJECT: Summary of Education- and Workforce-related Provisions in COVID-19 Legislative Relief Packages

This memorandum covers relevant education- and workforce-related provisions included in the various COVID-19 legislative relief packages being passed through Congress, updated to include the most recent, third relief package. Penn Hill Group will update this memorandum, as necessary, as Congress moves more relief packages.

COVID-19 Relief Package #1

Latest Action: Signed into law.

Summary: The first COVID-19 relief package, the Coronavirus Preparedness and Response Supplemental Appropriations Act (H.R.6074), included $8.3 billion in emergency funding and was signed into law on Friday, March 6. The bill was focused on vaccine development, research and equipment stockpiles, and supporting State and local health budgets. The bill did not contain any education- or workforce-related provisions.

COVID-19 Relief Package #2

Latest Action: Signed into law.

Summary: The second COVID-19 relief package, the Families First Coronavirus Response Act (H.R.6201), provided $1 billion in nutritional aid, expanded access to COVID-19 testing and expanded sick leave benefits, and was signed into law on Wednesday, March 18. Relevant education- and workforce-related provisions include:

- $500 million for the Supplemental Nutrition Program for Women, Infants, and Children (WIC).
- $400 million for the Commodity Assistance program.
- Emergency Supplemental Nutrition Assistant Program (SNAP) benefits for families with at least one child who would be receiving free and reduced-price meals and whose school has been closed for at least 5 consecutive days.
- $160 million for home delivered meals.
- $80 million for the Congregate Nutrition Services program under the Older Americans Act.
• Providing the U.S. Department of Agriculture (USDA) with authority to grant waivers (until September 30, 2020):
  o Of statutory and regulatory provisions under the Child Nutrition and School Lunch Acts in order to provide meals and meal supplements in the event of school closures due to COVID-19;
  o Of provisions in the School Lunch Act which prevent increased Federal costs when implementing summer food service programs;
  o To States for the purposes of providing meals and meal supplements in a manner that provides appropriate safety measures. These waivers would be automatically applied to States that seek them without further application by the State;
  o To provide non-congregate feeding under the Child and Adult Care Food program, if the waivers are connected to COVID-19;
  o Of requirements regarding the nutritional content of meals, if the waivers are connected to COVID-19;
  o Of administrative requirements under WIC for States, if the waivers are connected to COVID-19; and
  o Of the physical presence requirement at the time of WIC certification (current law requires WIC recipients to be physically present when they are certified for benefits). Anthropometric and bloodwork requirements would also be allowed to be waived.

• Providing an expansion of the Family and Medical Leave Act to provide:
  o Paid leave, connected to a public health emergency related to COVID-19, to employees at organizations with fewer than 500 total employees to care for a child if childcare is unavailable. Employees must be employed for at least 30 days by their employer and the U.S. Secretary of Labor is empowered to grant hardship exemptions for certain businesses with fewer than 50 employees and to exclude certain health care providers and emergency responders.
    ▪ The first 10 days of such leave may consist of unpaid leave, with employees being able to substitute vacation, paid leave or sick leave for unpaid leave. Employers are required to provide paid leave for leave days after such initial 10-day period. The amount of pay is required to be at least 2/3rds of the pay an employee would receive based on an employee’s normally scheduled hours of week. Paid leave would not have to exceed $200 per day or $10,000 in the aggregate.

• Providing an Employer provided paid sick leave benefit:
  o The benefit is provided to employees of private businesses with fewer than 500 employees and employees of public entities for illness or quarantine related to COVID-19 or the care of someone who is quarantined due to or ill because of COVID-19. Employers may exempt health care providers or emergency responders from this benefit.
  o Full-time employees can receive up to 80 hours, with part-time employees receiving up to the number of hours they would normally work over a 2-week period.
The paid sick leave benefit is in effect through the end of 2020. Limits exist on daily and aggregate paid sick leave amounts provided to employees.

The U.S. Secretary of Labor is empowered to grant hardship exemptions for certain businesses with fewer than 50 employees and to exclude certain health care providers and emergency responders from the benefit.

COVID-19 Relief Package #3

Latest Action: Passed by the Senate. The House is presently scheduled to consider the bill Friday morning, March 27.

Summary: The third COVID-19 relief package, the Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748), includes roughly $2 trillion in emergency funding for States, businesses and individuals. The package includes a significant amount of education- and workforce-related funding and provisions, summarized below.

Funding

U.S. Department of Education (ED) – The bill provides funding for a number of programs to be administered by ED, most notably to the Education Stabilization Fund, which distributes funding to States, local educational agencies (LEAs) and institutions of higher education (IHEs).

Education Stabilization Fund. This authority provides $30.75 billion in largely formula grant funding to Governors in each State, State educational agencies (SEAs) and institutions of higher education (IHEs). The timing for implementation of these funds depends on when the bill becomes enacted and how quickly ED can set up the necessary structures to deliver funding as would be required. The program structure is as follows:

- Initial reservations by ED: ½ percent reserved for the outlying areas, ½ percent reserved for Bureau of Indian Education (BIE) schools, and 1 percent reserved for States with the highest coronavirus burden (ED is required to issue an application within 30 days for the funds under this 1 percent authority).
- After reservations, ED allocates funds as follows:
  - 9.8 percent to Governors.
    - Governors receive funding via a formula that is 60 percent based on the State’s population ages 5 through 24 and 40 percent based on the State's Elementary and Secondary Education Act (ESEA) Title I child count.
    - Uses of funds include providing funding to significantly impacted LEAs (as deemed by the SEA), IHEs or education-related entities to continue to provide educational services, the provision of childcare and early childhood education, social and emotional support, and the protection of education-related jobs.
    - Governors must return to ED any funds that are not awarded within one year, with ED reallocating such returned funds to remaining States.
  - 43.9 percent to SEAs for SEA activities and grants to LEAs.
SEAs receive an allocation based on their ESEA Title I share.

SEAs will allocate not less than 90 percent of this funding to LEAs (including charter schools that are LEAs), according to LEAs’ ESEA Title I share. SEAs can retain 10 percent for SEA level activities.

Uses of funds include: any activities authorized under ESEA, the Individuals with Disabilities Education Act (IDEA), the Adult Education and Family Literacy Act, the Carl D. Perkins Career and Technical Education (CTE) Act and Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act; activities to prevent, prepare for, and respond to COVID-19; activities to address the unique needs of low-income students, students with disabilities, English learners, racial and ethnic minorities, foster care youth and students experiencing homelessness; providing meals for eligible students; providing technology for online learning to all students, including the purchasing of technology; mental health services and supports; and activities related to summer learning and supplemental afterschool programs.

Title I equitable participation requirements apply to K-12 funding (i.e. LEAs must reserve the proportion of funds equivalent to the number of children attending private schools in the school district compared to all children in the school district).

SEAs may reserve up to ½ percent for administrative costs and use the remainder for needs related to COVID-19, which may include the use of grants or contracts.

SEAs are required to return any funds to ED that are not awarded within 1 year with ED reallocating such returned funds to remaining States.

- 46.3 percent to IHEs.
  - 90 percent of IHE funds will be allocated to IHEs via a formula that is based on 75 percent Pell Grant student enrollment (excluding those students who are exclusively online) and 25 percent non-Pell Grant student enrollment (excluding those students who are exclusively online). These formula funds will be distributed to IHEs through the same systems ED uses to distribute Pell Grant and Federal student loan funds to IHEs.
  - 7.5 percent of funds will be allocated to Minority-Serving Institutions (MSIs) with funding going through MSI programs in the Higher Education Act (HEA) in the same proportion as funding was provided for those programs in the Fiscal Year (FY) 2020 appropriations bill.
  - 2.5 percent for IHEs with the greatest unmet need (with priority given to IHEs not getting at least $500,000 under the other IHE allocations).

IHEs must use at least 50 percent of their allocations to provide emergency financial aid to students, including eligible expenses under a student’s cost of attendance, such as food, housing, course materials, technology, health care, and childcare.

Uses of funds include covering any costs associated with significant changes to the delivery of instruction due to COVID-19, except funds may
not be used to make payment to contractors for pre-enrollment recruitment activities; and for endowments and capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship. Funds may be used to defray expenses already incurred.

- States receiving these funds must provide an assurance they will maintain support for elementary and secondary education and postsecondary education in FYs 2020 and 2021, with ED being able to waive this requirement for States that have experienced a precipitous decline in financial resources.
- States, LEAs and IHEs are required “to the greatest extent practicable” to continue to pay employees and contractors.

Other Specific program allocations for ED include:

- Project School Emergency Response to Violence (SERV) – $100 million
- Student Aid Administration – $40 million
- ED administrative and management expenses – $8 million
- ED’s Inspector General – $7 million

**U.S. Department of Labor (DOL)** – The bill provides $345 million in funding for the Dislocated Workers National Reserve to respond to COVID-19 issues.

**U.S. Department of Health and Human Services (HHS)** – The bill provides $750 million for Head Start and $3.5 billion for the Child Care and Development Block Grant (CCDBG) program. For CCDBG, funds can be:

- Used to provide assistance to providers due to decreased enrollment, closures or to remain open. States are encouraged to place conditions on providers to use a portion of funds to continue to pay staff wages.
- Used to provide childcare assistance to health care workers, emergency responders and sanitation workers without regard to income eligibility requirements.
- Available to providers even if providers were not receiving CCDBG assistance prior to COVID-19.
- Used for expenses incurred prior to the bill’s enactment for previously mentioned purposes.

**Corporation for Public Broadcasting (CPB)** – The bill provides $75 million in funding for CPB to prevent, prepare for, and respond to COVID-19, including for fiscal stabilization grants to public telecommunications entities, to maintain programming and services and preserve small and rural stations threatened by declines in non-Federal revenues.

**Institute of Museum and Library Services (IMLS)** – The bill provides $50 million in funding for IMLS to prevent, prepare for, and respond to COVID-19, including grants to States, territories and Indian tribes to expand digital network access, purchase internet accessible devices and provide technical support services. The bill does not require matching funds for IMLS.
Flexibility Provisions

ESEA – The bill includes a new U.S. Secretary of Education waiver authority under ESEA (National Emergency Educational Waivers). Under this authority, ED could waive certain provisions, upon request by a State, Indian tribe or LEA due to the COVID-19 emergency. At the State level, this includes the use of a streamlined application process and allows for the waiver of the following provisions:

- Assessments;
- Certain accountability system requirements;
- Certain requirements related to school identification under the accountability system (currently identified schools must maintain their designation and continue to receive supports and interventions);
- Any ESEA report card reporting requirements related to these areas; and
- Provisions regarding time periods to obligate funds (the Tydings amendment).

States, Indian tribes and LEAs may request waivers on a different set of provisions under a process other than the streamlined process described above. Waivers under this process must be approved or disapproved within 30 days and this process requires an applicant to provide an assurance of how negative consequences, if any, of the waiver will be mitigated. Waiver requests must include how the COVID-19 emergency requires the flexibility that is being requested. Provisions which may be waived under this process include:

- The poverty threshold necessary to do a school-wide program;
- Maintenance of effort;
- Restrictions on carry over limitations (unused funds from one year to the next);
- Certain requirements under the Student Supports and Academic Enrichment Grants program, including the needs assessment, spending certain percentages among the three programmatic focuses, and the limitation on technology spending; and
- Requirements related to the definition of professional development.

Waivers issued apply to all schools including public charter schools (for charter schools in accordance with State charter school law). Waivers are applicable for the 2019-2020 academic year, except in the carrying out the implementation of a maintenance of effort waiver granted during the 2019-2020 academic year for future academic years.

HEA – The bill provides flexibility around a number of HEA provisions related to student aid, including:

- Waiving the requirement to provide a non-Federal match for Federal Supplemental Educational Opportunity Grants (SEOG) and Federal Work-Study (FWS) for the 2019-20 and 2020-21 award years.
- Allowing IHEs to transfer unexpended funds from FWS to SEOG during the COVID-19 emergency.
- Permitting IHEs to use SEOG funds to provide emergency financial aid grants to assist students with unexpected expenses due to COVID-19 emergency.
• Permitting IHEs to continue to make FWS payments to who were participating in the program but are unable to fulfill their FWS obligation due to the COVID-19 emergency for up to one academic year.
• Requiring ED to exclude any period of enrollment during which a student was unable to complete due to the COVID-19 emergency, for the purposes of usage limitations on subsidized loans.
  o As a reminder, current Direct Loan borrowers are generally limited to receiving subsidized loans for up to 150% of the length of program – i.e. for a 2-year program the limit would be 3 years.
• Requiring ED to exclude any semester in which a student is unable to complete due to the COVID-19 emergency from the student’s Pell Grant lifetime usage limits (if the Secretary is able to administer the policy in a manner that limits complexity and burden on the student).
• Relieving both IHEs and students of Return of Title IV Funds requirements during a term in which they withdraw due to the COVID-19 emergency.
• Requiring ED to cancel a borrower’s loan obligation if a borrower withdraws from an IHE as a result of the COVID-19 emergency. This applies to the portion of loan attributable to the payment period.
• Allowing IHEs to provide a student with an approved leave of absence due to the COVID-19 emergency under certain conditions.
• Allowing IHEs to exclude any attempted credits not completed by a student from the student’s satisfactory academic progress calculation due to the COVID-19 emergency.
• Allowing foreign IHEs to offer programs via distance learning to Title IV-eligible students during the COVID-19 emergency for the payment period during such emergency and the following payment period. Programs offered via distance education from March 1, 2020 through the date of enactment of the bill are covered by the previous sentence.
• Allowing foreign IHEs to enter into agreements with U.S.-based IHEs to allow a student of a foreign IHE to take courses at a U.S.-based IHE due to a qualifying emergency.
• Allowing ED to defer payments on Historically Black Colleges and Universities (HBCU) Capital Financing Loans due to COVID-19 issues.
• Allowing ED to modify matching requirements and required and authorized uses of funds under certain HEA programs.
• Allowing ED to modify certain requirements related to wait out periods, allotment requirements and other matters for IHEs receiving assistance under certain MSI program authorities
• Allowing ED to modify service requirements related to TEACH Grants and Teacher Loan Forgiveness due to the COVID-19 emergency.

Corporation for National and Community Service (CNCS) – The bill provides flexibility to alter service and age requirements and provide the full education award for COVID-19 impacted individuals.
Student Loan Payment Suspension

The bill also includes several provisions which would suspend payment and interest on Direct Loans and Federal Family Education Loans (FFEL) that are held by ED, including:

- Automatically suspending payments on these loans until September 30, 2020, with no interest accruing during this period of suspension. Eligibility for Public Service Loan Forgiveness (PSLF) and other loan forgiveness programs and requirements for borrowers who are rehabilitating their loans will not be negatively affected by any suspension of payments.
- Ensuring that any payment that is suspended would be treated as a payment made by the borrower for consumer reporting agency purposes.
- Suspending involuntary collections during the suspension period described above (such as wage garnishment and social security withholding).

Tax Benefit Pertaining to Companies that Contribute Toward Student Loans of Employees

Under the bill, employers could provide a student loan repayment benefit to employees on a tax-free basis. An employer would be able to contribute up to $5,250 annually toward an employee’s student loans, and such payment would be excluded from the employee’s income. The provision applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

Child Nutrition

The bill provides $8.8 billion to the Food and Nutrition Services at USDA for child nutrition programs to prevent, prepare for, and respond to COVID-19.

Provisions Related to Nonprofits

Questions have been raised about provisions in the bill that would normally be thought of as applying to for-profit businesses also applying to nonprofits. Below are five provisions in the bill that include or relate to nonprofits explicitly:

- Charitable Contributions – the bill allows individuals to make contributions up to $300 to qualifying charities and deduct the contribution “above the line” in computing adjusted gross income (AGI). The bill also modifies the AGI limitations on charitable contributions for 2020, to 100 percent of AGI for individuals and 25 percent of taxable income for corporations.
- Employee Retention Credit – the bill provides a credit against social security payroll taxes (6.2 percent) for any business, including nonprofits, that close or suspend its operations due to the virus.
- Delay of Tax Payment – the bill would allow employers, including nonprofits, struggling to make payroll to be able to pay their share of the 6.2 percent Social Security tax, that would otherwise be due, from now until the end of the year.
• Paycheck Protection Program – the bill provides $350 billion for 8-weeks of cash-flow assistance to small business and small nonprofits (under 500 employees) through guaranteed loans. Loan may be forgiven if they largely maintain their payroll.

• Economic Injury Disaster Loan (EIDL) – the bill creates expedited access to capital by establishing a $10 billion program for small businesses, including nonprofits, who have applied for EIDL to request an advance of up to $10,000 on the loan to provide paid sick leave to employees, maintaining payroll and other debt obligations.
Congressional Response to COVID-19

March 26, 2020

Phase 1

Congress passed $8.3 billion in emergency funding for federal agencies to respond to the coronavirus outbreak. It was signed into law by the president on March 6, 2020. This legislation is primarily geared towards prevention, preparation, and response efforts. A summary can be found here.

Phase 2

On March 18, 2020, President Trump signed legislation passed by Congress that expands the Family Medical Leave Act (FMLA) and federal paid sick leave law, among other things.

For details on the FMLA expansion, see the following analysis from the general counsel at the United States Conference of Catholic Bishops (USCCB), a CAPE member organization.

For details on the paid sick leave provisions, see the following analysis by the USCCB general counsel.

Per US Department of Labor guidance, these provisions will take effect April 1, 2020.

Phase 3

In the late evening of March 25, 2020, the US Senate passed COVID-19 relief legislation with an unprecedented $2 trillion price tag, larger than the entire annual federal budget.

Timeline and CAPE Actions

- On March 13, 2020, CAPE sent versions of the same letter to the House and Senate education and appropriations committees. Those letters laid out the principle that private schools should be included in whatever relief package
Congress approves for K-12 education.

- On March 18, 2020, CAPE again wrote those committees to comment on the “Murray/Scott” legislation that had been introduced in the House and Senate providing aid to K-12 schools -- aid which private schools would be eligible for.

- On March 19, Senate Majority Leader Mitch McConnell unveiled the “CARES Act,” which immediately became the vehicle for “Phase III” coronavirus response on the Senate side. It did not include aid for K-12 education.

- On March 20, CAPE sent a third letter to the Senate and House education committees, expressing strong concern over language in the CARES Act that could allow LEAs to request a waiver from ESSA/IDEA equitable services/proportionate share requirements. The letter also expressed disappointment that the CARES Act did not contain K-12 aid.

- On March 22, 2020, an updated version of the CARES Act was released along with a supplemental appropriations package, which included aid for K-12 education that private schools would be eligible for. The new language also incorporated CAPE’s request that LEAs not be able to request a waiver from equitable services/proportionate share requirements under ESSA and IDEA, as well as another clarification suggested by CAPE.

- On March 24, 2020, word circulated that an attempt was being made to exclude private schools from the aid package. In response, CAPE activated its grassroots network.

- On the evening of March 25, 2020, CARES Act language negotiated by Senate Republicans, Senate Democrats, and the Trump Administration was released and passed unanimously. Private schools are eligible for aid in this bill, which now requires House of Representatives approval.

CARES Act Language of Interest to Private Schools (as of March 25)

1. Elementary and Secondary Education: $13.5 billion in formula funding directly to states, to help schools respond to coronavirus and related school closures, meet the immediate needs of students and teachers, improve the use of education technology, and support distance education (see pages 757-760 for list of uses of funds).

Private schools are eligible for this program under the following language:

SEC. 18005. ASSISTANCE TO NON-PUBLIC SCHOOLS
(a) IN GENERAL.—A local educational agency receiving funds under sections 18002 or 18003 of this title shall provide equitable services in the same manner as provided under section 1117 of the ESEA of 1965 to students and teachers in non-public schools, as determined in consultation with representatives of non-public schools.
(b) PUBLIC CONTROL OF FUNDS.—The control of funds for the services and assistance provided to a non-public school under
subsection (a), and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property and shall provide such services (or may contract for the provision of such services with a public or private entity).

2. **Governor’s Emergency Education Relief Fund:** $3 billion for governors to provide emergency support to schools most impacted by coronavirus. Sixty percent of the allocation is based on student population and forty percent of the allocation is based on section 1124(c) of ESSA. Private schools are eligible under the “Section 18005 Assistance to Non-Public Schools” language cited above.

3. **Keeping American Workers Employed and Paid Small Business Loans:** $350 billion for federally guaranteed loans to small employers, nonprofits are eligible. The portion of the loan used for maintaining payroll will be forgiven. For more detail, see this document released by Senate leaders and a one-pager from Senator Rubio’s office.

4. **Partial Above the Line Deduction for Charitable Contributions:** Permits a deduction of up to $300 for cash contributions to charitable organizations, whether taxpayers itemize their deductions or not.

*This is a preliminary analysis that will be updated as circumstances warrant...*
The Emergency Family and Medical Leave Expansion Act

The Emergency Family and Medical Leave Expansion Act passed by Congress and signed into law by the President adds new provisions to the federal Family and Medical Leave Act (FMLA). Under these new provisions, covered employers must provide FMLA leave for a “qualifying need related to a public health emergency.” More details follow.

I. What employers are required to provide the new FMLA leave? Any employer with fewer than 500 employees. However, the Secretary of Labor has the authority to issue regulations exempting “small businesses” with fewer than 50 employees from the requirements of this section when the imposition of such requirements would jeopardize the viability of the business as a going concern. (Thus, there is no general or automatic exemption for employers with fewer than 50 employees as there is for other types of FMLA leave. An employer with fewer than 50 employees is not subject to a civil action by employees as is the case for employers with 50 or more employees, but is subject to an administrative action by the government for a violation of the Act.)

II. Under the bill, who is eligible for this new FMLA leave? Any employee who, for at least 30 calendar days, has been employed by his or her employer. (Thus, eligibility for FMLA leave under this Act is more lenient than the usual 12-month, 1,250-hour employment requirement applicable to other types of FMLA leave.¹)

¹ The Secretary of Labor has the authority to issue regulations excluding certain health care providers and emergency responders from the definition of eligible employee, and an employer of an employee who is a health care provider or emergency responder may elect to exclude that employee from the application of this section of the bill.
III. What may the new FMLA leave be used for? FMLA leave may be used because of a “qualifying need related to a public health emergency.” With respect to leave, the quoted phrase is defined to mean that the employee “is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.”

IV. Is leave paid or unpaid? The first ten days of FMLA leave under the Act “may consist of unpaid leave” but an employee may elect to substitute any accrued vacation leave, personal leave, or medical or sick leave for unpaid leave (the employer may not require substitution of paid for unpaid leave). After ten days of such leave, the employer must provide paid FMLA leave at a rate of no less than two-thirds of the employee’s salary (that is, 2/3 of the employee’s regular rate times the number of hours the employee would otherwise be normally scheduled to work). In the case of an employee whose schedule varies from week to week, special rules apply if the pay cannot be determined with certainty using the foregoing method. The 2/3 paid leave requirement is subject to a cap of $200 per day and $10,000 in the aggregate.

V. How much FMLA leave is available under the Act? The FMLA currently allows up to 12 weeks of FMLA leave. The bill does not change (and therefore retains) the 12-week cap.

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2 A “public health emergency” is “an emergency with respect to COVID-19 declared by a Federal, State, or local authority.” A “child care provider” is “a provider who receives compensation for providing child care services on a regular basis, including an ‘eligible child care provider’ (as defined in … 42 U.S.C. 9858n).” The term “school” means an “elementary school” or “secondary school” as those terms are defined in 20 U.S.C. 7801.

3 Under the special rules, the employer shall figure the number of average hours that the employee was scheduled per day over the 6-month period ending on the date on which the employee takes leave, including hours for which the employee took leave of any type. If the employee did not work over such period, then the employer shall base its calculation on the “reasonable expectation” of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.
VI. Must the employee provide notice? Yes, but the employee need provide only such notice as is “practicable.” (The Act cross-references a now-nonexistent section of the initially-passed House bill, so it is not clear when this notice requirement applies.)

VII. Does the employee who takes leave have a right to restoration to the same or equivalent position? Yes, with one rather narrow and complicated exception for employers with fewer than 25 employees. 4

VIII. When do these requirements take effect? Not later than 15 days after the date of enactment of the Act.

IX. How long are these requirements in place? Until December 31, 2020.

X. Will employers receive a subsidy to offset the cost of providing FMLA leave under this bill? Yes. Employers can get corresponding tax credits, which can be claimed against payroll taxes, limited to $200 per day per employee for up to 10 weeks.

4 The exception applies if the position held by the employee when the leave commenced “does not exist due to economic conditions or other changes in operating conditions of the employer … that affect employment … and … are caused by a public health emergency during the period of leave,” the employer made reasonable efforts to restore the employee to a position equivalent to the position he or she held when leave commenced and with equivalent pay, benefits, and other terms and conditions of employment, and (if those reasonable efforts fail) the employer makes reasonable efforts, during the one-year period beginning on the earlier of the date on which the need for leave concluded or 12 weeks after the date on which the employee’s leave commenced, to contact the employee if an equivalent position becomes available.
The Emergency Paid Sick Leave Act

The Emergency Paid Sick Leave Act passed by Congress and signed by the President into law requires that covered employers provide paid sick leave for the reasons described below.

I. What employers are required to provide the paid sick leave? Any employer engaged in commerce or in any industry affecting commerce that employs fewer than 500 employees.

II. Who is eligible for paid sick leave? With respect to private employers, any person who is regarded as an “employee” for purposes of the Fair Labor Standards Act.¹

III. For what reasons may the prescribed paid sick leave be used? Paid sick leave may be used for any of the following reasons—

1. the employee is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. the employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. the employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
4. the employee is caring for an individual who is subject to an order as described in paragraph (1) above or has been advised as described in paragraph (2);
5. the employee is caring for a son or daughter² if their school or place of care has been closed, or the child care provider of the son or daughter is unavailable, due to COVID-19 precautions;
6. the employee is experiencing any other substantially similar condition specified by the Secretary of HHS in consultation with the Secretaries of Treasury and Labor.

¹ An employer of an employee who is a health care provider or an emergency responder may elect to exclude such employee from the application of the paid sick leave provisions of the bill.

² “Son” and “daughter” have the same meaning given such terms in the Family and Medical Leave Act, i.e., a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is (a) under 18 years of age, or (b) 18 years of age or older and incapable of self-care because of a mental or physical disability.
IV. How much paid sick leave must be provided under the bill? Up to 80 hours for full time employees. For part-time employees, the number of hours that the employee works, on average, over a 2-week period. Special rules apply if the average pay of a part-time employee whose schedule varies from week to week cannot be determined with certainty.3

V. How much pay must be provided during the leave? Regular pay, but only 2/3 of pay need be provided if the reasons for the leave are as described in III(4), (5), or (6). However, in no event shall paid sick leave exceed (a) $511 per day and $5,110 in the aggregate for a use described in III(1), (2), or (3), or (b) $200 per day and $2,000 in the aggregate for a use described in III(4), (5), or (6).

VI. Does paid sick leave carry over from one year to the next? No.

VII. When does paid sick leave cease? Paid sick leave under the bill ceases beginning with the employee’s next scheduled workshift immediately following the termination of the need for paid leave under III above.

VIII. What about employers that already provide paid sick leave? Paid sick time under the Act must be made available to employees in addition to any paid leave the employer already provides on the day before the date of enactment of the Act, and the employer may not change its paid leave policy on or after the date of enactment of the Act to avoid this requirement.

IX. May an employer require, as a condition of providing paid sick leave under the Act, that the employee search for or find a replacement to cover the hours during which the employee is using paid sick leave? No.

3 Under the special rules, the employer shall figure the number of average hours that the part-time employee was scheduled per day over the 6-month period ending on the date on which the employee takes the paid sick leave, including hours for which the employee took leave of any type. If the employee did not work over such period, then the employer shall base its calculation on the “reasonable expectation” of the employee at the time of hiring of the average number of hours per day that the employee would normally be scheduled to work.
X. May an employer require an employee to take paid leave under the employer’s policies before taking paid leave under the Act? No.

XI. Are there posting requirements? Yes. The employer must post and keep posted, in conspicuous places on its premises where notices to employees are customarily posted, a notice, to be prepared or approved by the Secretary of Labor, of the requirements of the Act. The Act requires the Secretary to make a model notice publicly available no later than seven days after enactment of the Act.

XII. May an employer discharge, discipline, or in any other manner discriminate against any employee who takes leave under the Act or has filed a complaint related to the Act? No.

XIII. May the employer require that the employee follow reasonable notice procedures to continue receiving paid sick leave under the Act? Yes. After the first workday (or portion thereof) an employee receives paid sick time under the Act, the employer may require the employee to follow “reasonable notice procedures” in order to continue receiving such paid leave.

XIV. When does the Act take effect? No later than 15 days after the date of enactment of the Act.

XV. How long are these requirements in place? The sick leave requirements of the Act expire on December 31, 2020.

XVI. Can employer receive a subsidy to offset the cost of providing sick leave under the bill? Yes. The payroll tax credits give employer 100 percent of the qualified sick leave wages an employer is required to pay under the Emergency Paid Sick Leave Act. The credit shall not exceed $511 per day for any portion of sick leave paid for reasons described in paragraphs (1), (2), and (3) of Q&A No. 3 above. The credit is capped at $200 per day for any portion of sick leave paid for reasons described in paragraphs (4), (5), and (6) of Q&A No. 3 above.
Dear Chairman Alexander and Ranking Member Murray:

The Council for American Private Education (CAPE) appreciates the extraordinary responsibility that members of your committee bear in responding to the Coronavirus pandemic. We recognize that meeting the needs of 325 million Americans in this time of uncertainty will be no easy task, and that difficult choices will need to be made in allocating limited resources. We trust that the needs of the vulnerable will be given priority, and that in these circumstances, this is a category that will include children of school age and those entrusted with their care.

As you craft any COVID-19 relief packages, we would urge that any provisions directed towards the needs of K-12 students and educators be written to include students and educators in private schools. Private school students, their families, and the teachers and administrators who operate their schools are equally in need of assistance in a time of crisis as are public schools. Use of the term “schools,” without qualifying them as “public” and “private,” is the appropriate language which would allow ALL schools to be covered by the legislation.

We ask that private schools be treated as they were during the aftermath of Hurricanes Katrina, Harvey, and Maria. The relief efforts enacted by Congress after these disasters provided emergency assistance funding for all schools, not just public schools, to begin restart efforts in the safest possible environments.

In this time of national crisis, the governance structures of schools should have no bearing on the fact that their students are in need of whatever protections and relief that Congress sees fit to extend to schoolchildren and the adults who educate them. There are over 33,000 private schools in America. One in four of the nation’s schools is a private school. More than five million students attend these schools. This is not a time for excluding millions of children from school relief measures.

CAPE’s member organizations represent more than 80 percent of private school enrollment nationwide. On their behalf, thank you for your consideration of this request.
Sincerely,

Michael Schutloffel
Executive Director
March 18, 2020

Dear Senators:

As the Senate crafts legislation responding to the coronavirus pandemic, the Council for Private Education (CAPE) would like to take this opportunity to offer the following suggestions in the area of K-12 education. CAPE is a coalition of national organizations and state affiliates serving private elementary and secondary schools. There are over 33,000 private schools in America. One in four of the nation’s schools is a private school. More than five million students attend these schools. CAPE member organizations represent more than 80 percent of private school enrollment nationwide.

SUMMARY

The non-public school community is grateful for inclusion in the proposed Supporting Students in Response to Coronavirus Act (S. 3489). We appreciate language that requires “assurance” that the Local Education Agency (LEA) “has taken the needs of…non-public schools into account” and that non-public schools receive notification of funds awarded to the LEA. We also support the “Control of Funds” language.

However, in practice, we have seen from experience that if the LEAs do not officially count the non-public school community in the grant request, they are almost certain to not include non-public schools in the expediting of services or materials purchased with awarded funds. LEAs are familiar with this element of equity in other federal education programs, and the use of already existing language would aid in ensuring smooth implementation of a new relief package. In the Every Student Succeeds Act
(ESSA), this fairness is referred to as “equitable services,” and in the Individuals with Disabilities Education Act (IDEA), this is referred to as a “proportionate share.”

It is vital that the language in the relief bill direct the grant writing entity (presumably a state’s department of education) to include a count of non-public schools and a child count of students attending non-public schools in the grant application itself. With this count, an equitable funding share can be determined.

HISTORICAL REFERENCE

In addition to ESSA and IDEA, there is historical precedent for such language in an emergency relief package, dating back to the Katrina Relief package in 2006 (PL 109-148):

SEC. 102. IMMEDIATE AID TO RESTART SCHOOL OPERATIONS.

(a) Purpose.--It is the purpose of this section--

(1) to provide immediate services or assistance to local educational agencies and non-public schools in Louisiana, Mississippi, Alabama, and Texas that serve an area in which a major disaster has been declared in accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), related to Hurricane Katrina or Hurricane Rita; and

(2) to assist school administrators and personnel of such agencies or non-public schools with expenses related to the restart of operations in, the re-opening of, and the re-enrollment of students in, elementary schools and secondary schools in such areas.

(b) Payments Authorized.--From amounts appropriated to carry out this subtitle, the Secretary of Education is authorized to make payments, on such basis as the Secretary determines appropriate, taking into consideration the number of students who were enrolled, during the 2004-2005 school year, in elementary schools and secondary schools that were closed on September 12, 2005, as a result of Hurricane Katrina or on October 7, 2005, as a result of Hurricane Rita, to State educational agencies in Louisiana, Mississippi, Alabama, and Texas to enable such agencies to provide services or assistance to local educational agencies or non-public schools serving an area in which a major disaster has been declared in accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), related to Hurricane Katrina or Hurricane Rita.

(c) Eligibility, Consideration, and Equity.--

(1) Eligibility and consideration.--From the payment provided by the Secretary of Education under subsection (b), the State educational agency shall provide services and assistance to local educational agencies and non-public schools, consistent with the provisions of this section. In determining the amount to be provided for services or assistance under this section, the State educational agency shall consider the following:

(A) The number of school-aged children served by the local educational agency or non-public school in the academic year preceding the academic year for which the services or assistance are provided.

(B) The severity of the impact of Hurricane Katrina or Hurricane Rita on the local educational agency or non-public school and the extent of the needs in each local educational agency or non-public school in Louisiana, Mississippi, Alabama, and Texas that is in an
area in which a major disaster has been declared in accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), related to Hurricane Katrina or Hurricane Rita.

(2) Equity.--Educational services and assistance provided for eligible non-public school students under paragraph (1) shall be equitable in comparison to the educational services and other benefits provided for public school students under this section, and shall be provided in a timely manner.

NEEDS TAKEN INTO ACCOUNT

Below are some suggestions for stronger language to ensure non-public schools are included in the grant application, rather than simply having their “needs taken into account.”

SEC. 2. EDUCATION PREPAREDNESS AND SUPPORT GRANTS.

(d) USE OF FUNDS; SUBGRANTS.—

(2) APPLICATION.—An eligible entity desiring to receive a subgrant under this section shall submit to the State, or the Bureau of Indian Education, as applicable, an application containing—

(D) in the case of an eligible entity that is a local educational agency, an assurance that the local educational agency—

(i) has taken the needs of public schools and non-public schools into account prior to the application for funds;
   a. has included a count of the number of non-public schools and students attending non-public schools in the boundary of the LEA in order to determine and allocate the equitable share of grant funds to serve non-public schools;
   b. has consulted with non-public school representatives to determine the needs of non-public schools, students and teachers;

(ii) will notify all public schools and non-public schools in its boundaries of the receipt of grant funds under this section;
   a. Will notify non-public schools of the equitable share of funds available for non-public schools
   (iii) based on the severity of impact and demonstrated need, will equitably address the needs of both public schools and non-public schools in its boundaries; and

(g) PUBLIC CONTROL OF FUNDS.—For an eligible entity that is a local educational agency—

(1) the control of funds for the services and assistance provided to a non-public school under this section, and title to materials, equipment, and property purchased with such funds, shall be in a public agency, and a public agency shall administer such funds, materials, equipment, and property and shall provide such services (or may contract for the provision of such services with a public or private entity);

(2) when carrying out subsection (e), the local educational agency must equitably serve non-public schools based on demonstrated need and impact

(h) REPORTING.—

(1) REPORT TO THE SECRETARY.—At the end of the grant period, a grantee shall prepare and submit to the Secretary a report containing the following information:

   (A) The number of subgrants awarded, disaggregated by the type of eligible entity.
   (B) A list of subgrantees.
   (C) The average subgrant award amount.
   (D) The number of subgrant applicants.
(E) A summary of the activities that eligible entities carried out using subgrant funds.
   i. The equitable share of funds that served non-public schools for each subgrant that is an LEA and how that equitable share was determined.

USE OF FUNDS

Finally, in the section regarding eligible use of funds, we request clarification that technology can include hardware, software, and online connectivity to address the need to serve students from home for long periods of time.

(e) USES OF FUNDS FOR SUBGRANTS.—An eligible entity receiving a subgrant under this section shall use subgrant funds to carry out one or more of the following activities:

   (9) Purchasing educational technology (including hardware, software and connectivity) for students who are served by the eligible entity, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.

CONCLUSION

Thank you very much of your consideration of these suggestions. I can be reached at michael@capenet.org for further information.

Sincerely,

Michael Schutloffel
Executive Director
March 20, 2020

Dear Chairman Alexander and Ranking Member Murray:

The non-public school community would like to raise immediate concerns regarding Section 4511 of the CARES Act, introduced in the US Senate on March 19, 2020. Specifically, the waiver authority given to states in the CARES Act is overly broad. We request that language be added to more clearly define the scope of the following section:

SEC. 4511. NATIONAL EMERGENCY EDUCATIONAL WAIVERS

(b) APPLICABLE PROVISIONS OF LAW.—
   (1) IN GENERAL.—The Secretary of Education may waive any statutory or regulatory requirement (such as those requirements related to assessments, accountability, allocation of funds, and reporting), for which a waiver request is submitted under subsection (c), if the Secretary determines that such a waiver is necessary and appropriate as described in 2 subsection (a), under the following provisions of law:


Non-public school students and teachers receive services under The Elementary and Secondary Education Act of 1965, today called the Every Student Succeeds Act (ESSA). ESSA requires equitable services to be provided to non-public school students and their teachers, and consultation to occur before any decisions are made by the local education agency (LEA) about equitable services. If LEAs were to be granted a waiver under the CARES Act from the allocation of funds to equitable services, non-public schools would be left with no access to federal education program services.

While there is a reasonable argument to be made that public schools should be given flexibility regarding state assessments and reporting requirements to the US Department of Education in this emergency, it is critical that non-public schools not have equitable services limited or even withdrawn under Titles I, IIA, III or
IV. We request a specific limitation to ensure that the secretary may not waive equitable services for non-public schools.

Secondly, paragraph 3 of the same section allows no more than 15 days for the secretary of education to approve or disapprove the waiver requests. This timeframe is far too short. A failure to provide sufficient time for proper consideration of waiver requests could be an invitation to overreach in those requests, potentially to the detriment of the non-public school community.

Third, under the CARES Act, the secretary is given 30 days to report to Congress on additional waiver authority under the Individuals with Disabilities Education Act (IDEA). Again, students with disabilities who are parentally placed in non-public schools should be protected against any waiver request from an LEA asking to not allocate funds to the non-public school proportionate share. Such a waiver would leave parentally placed students in non-public schools with no access to services under IDEA. We ask that the legislation clearly specify the scope of the new waiver authority in order to ensure that the determination of the proportionate share and the provision of equitable services to non-public schools remain a necessary requirement even during this emergency.

Finally, as currently drafted, the CARES Act contains no mention of specific resources for schools such as what is found in the proposed Murray/Scott education relief package. We encourage Congress to work to provide all schools – public and non-public – with the additional resources necessary to respond to this national emergency. America’s students, their families, and the teachers and administrators who operate all of our nation’s wide and diverse array of schools are in need of assistance in this time of crisis. We thank you for your urgent attention to this situation.

Sincerely,

Michael Schuttloffel
Executive Director
DIVISION A – KEEPING WORKERS PAID AND EMPLOYED, HEALTH CARE SYSTEM ENHANCEMENTS, AND ECONOMIC STABILIZATION

TITLE I—KEEPING AMERICAN WORKERS PAID AND EMPLOYED ACT

Section 1101. Definitions

Section 1102. Paycheck Protection Program

Increases the government guarantee of loans made for the Payment Protection Program under section 7(a) of the Small Business Act to 100 percent through December 31, 2020.

Outlines the terms in this section.

Provides the authority for the Administrator of the U.S. Small Business Administration (SBA) to make loans under the Paycheck Protection Program.

Requires the Administrator to register each loan using the taxpayer TIN, as defined by the Internal Revenue Service, within 15 days.

 Defines eligibility for loans as a small business, 501(c)(3) nonprofit, a 501(c)(19) veteran’s organization, or Tribal business concern described in section 31(b)(2)(C) of the Small Business Act with not more than 500 employees, or the applicable size standard for the industry as provided by SBA, if higher.

Applies current SBA affiliation rules to eligible nonprofits.

Includes sole-proprietors, independent contractors, and other self-employed individuals as eligible for loans.

Allow businesses with more than one physical location that employs no more than 500 employees per physical location in certain industries to be eligible and is below a gross annual receipts threshold in certain industries to be eligible.

Waives affiliation rules for businesses in the hospitality and restaurant industries, franchises that are approved on the SBA’s Franchise Directory, and small businesses that receive financing through the Small Business Investment Company (SBIC) program.

Defines the covered loan period as beginning on February 15, 2020 and ending on June 30, 2020.

Establishes the maximum 7(a) loan amount to $10 million through December 31, 2020 and provides a formula by which the loan amount is tied to payroll costs incurred by the business to determine the size of the loan.

Specifies allowable uses of the loan include payroll support, such as employee salaries, paid sick or medical leave, insurance premiums, and mortgage, rent, and utility payments.
Provides delegated authority, which is the ability for lenders to make determinations on borrower eligibility and creditworthiness without going through all of SBA’s channels, to all current 7(a) lenders who make these loans to small businesses, and provides that same authority to lenders who join the program and make these loans.

For eligibility purposes, requires lenders to, instead of determining repayment ability, which is not possible during this crisis, to determine whether a business was operational on February 15, 2020, and had employees for whom it paid salaries and payroll taxes, or a paid independent contractor.

Provides an avenue, through the U.S. Department of Treasury, for additional lenders to be approved to help keep workers paid and employed. Additional lenders approved by Treasury are only permitted to make Paycheck Protection Program loans, not regular 7(a) loans.

Provides a limitation on a borrower from receiving this assistance and an economic injury disaster loan through SBA for the same purpose. However, it allows a borrower who has an EIDL loan unrelated to COVID-19 to apply for a PPP loan, with an option to refinance that loan into the PPP loan. The emergency EIDL grant award of up to $10,000 would be subtracted from the amount forgiven under the Paycheck Protection Program.

Requires eligible borrowers to make a good faith certification that the loan is necessary due to the uncertainty of current economic conditions caused by COVID-19; they will use the funds to retain workers and maintain payroll, lease, and utility payments; and are not receiving duplicative funds for the same uses from another SBA program.

Waives both borrower and lender fees for participation in the Paycheck Protection Program.

Waives the credit elsewhere test for funds provided under this program.

Waives collateral and personal guarantee requirements under this program.

Outlines the treatment of any portion of a loan that is not used for forgiveness purposes. The remaining loan balance will have a maturity of not more than 10 years, and the guarantee for that portion of the loan will remain intact.

Sets a maximum interest rate of four percent.

Ensures borrowers are not charged any prepayment fees.

Increases the government guarantee of 7(a) loans to 100 percent through December 31, 2020, at which point guarantee percentages will return to 75 percent for loans exceeding $150,000 and 85 percent for loans equal to or less than $150,000.
Allows complete deferral of 7(a) loan payments for at least six months and not more than a year, and requires SBA to disseminate guidance to lenders on this deferral process within 30 days.

Provides guidance for loans sold on the secondary market.

Provides the regulatory capital risk weight of loans made under this program, and temporary relief from troubled debt restructuring (TDR) disclosures for loans that are deferred under this program.

Requires the Administrator to provide a lender with a process fee for servicing the loan. Sets lender compensation fees at five percent for loans of not more than $350,000; three percent for loans of more than $350,000 and less than $2,000,000; and one percent for loans of not less than $2,000,000.

Includes a sense of the Senate for the Administrator to issue guidance to lenders and agents to ensure that the processing and disbursement of covered loans prioritizes small business concerns and entities in underserved and rural markets, including veterans and members of the military community, small business concerns owned and controlled by socially and economically disadvantaged individuals.

Provides an authorization level of $349 billion for the 7(a) program through December 31, 2020.

Increases the maximum loan for a SBA Express loan from $350,000 to $1 million through December 31, 2020, after which point the Express loan will have a maximum of $350,000.

Requires Veteran’s fee waivers for the 7(a) Express loan program to be permanently waived.

Permanently rescinds the interim final rule entitled, “Express Loan Programs: Affiliation Standards” (85 Fed. Reg. 7622 (February 10, 2020)).

**Section 1103, Entrepreneurial Development**

Authorizes SBA to provide additional financial awards to resource partners (Small Business Development Centers and Women’s Business Centers) to provide counseling, training, and education on SBA resources and business resiliency to small business owners affected by COVID-19.

Authorizes SBA to provide an association or associations representing resource partners with grants to establish:

- one online platform that consolidates resources and information available across multiple Federal agencies for small business concerns related to COVID–19; and
- a training program to educate Small Business Development Center, Women’s Business Center, Service Corps of Retired Executives, and Veteran’s Business
The Keeping American Workers Paid and Employed Act would provide $377 billion to help prevent workers from losing their jobs and small businesses from going under due to economic losses caused by the COVID-19 pandemic. The Paycheck Protection Program would provide 8 weeks of cash-flow assistance through 100 percent federally guaranteed loans to small employers who maintain their payroll during this emergency. If the employer maintains its payroll, then the portion of the loan used for covered payroll costs, interest on mortgage obligations, rent, and utilities would be forgiven, which would help workers to remain employed and affected small businesses and our economy to recover quickly from this crisis. This proposal would be retroactive to February 15, 2020 to help bring workers who may have already been laid off back onto payrolls.

**Paycheck Protection Program**
- The bill would provide $350 billion to support loans through a new Paycheck Protection Program for:
  - Small employers with 500 employees or fewer, as well as those that meet the current Small Business Administration (SBA) size standards;
  - Self-employed individuals and “gig economy” individuals; and
  - Certain nonprofits, including 501(c)(3) organizations and 501(c)(19) veteran organizations, and tribal business concerns with under 500 employees.
- The size of the loans would equal 250 percent of an employer’s average monthly payroll. The maximum loan amount would be $10 million.
- Covered payroll costs include salary, wages, and payment of cash tips (up to an annual rate of pay of $100,000); employee group health care benefits, including insurance premiums; retirement contributions; and covered leave.
- The cost of participation in the program would be reduced for both borrowers and lenders by providing fee waivers, an automatic deferment of payments for one year, and no prepayment penalties.
- Loans would be available immediately through more than 800 existing SBA-certified lenders, including banks, credit unions, and other financial institutions, and SBA would be required to streamline the process to bring additional lenders into the program.
- The Treasury Secretary would be authorized to expedite the addition of new lenders and make further enhancements to quickly expedite delivery of capital to small employers.
- The maximum loan amount for SBA Express loans would be increased from $350,000 to $1 million. Express loans provide borrowers with revolving lines of credit for working capital purposes.

**Entrepreneurial Assistance**
- The bill would provide $265 million for grants to SBA resource partners, including Small Business Development Centers and Women’s Business Centers, to offer counseling, training, and related assistance to small businesses affected by COVID-19.
- $10 million would be provided for the Minority Business Development Agency to provide these services through Minority Business Centers and Minority Chambers of Commerce.

**Emergency EIDL Grants**
- The bill would expand eligibility for entities suffering economic harm due to COVID-19 to access SBA’s Economic Injury Disaster Loans (EIDL), while also giving SBA more flexibility to process and disperse small dollar loans.
- The bill would allow businesses that apply for an EIDL expedited access to capital through an Emergency Grant—an advance of $10,000 within three days to maintain payroll, provide paid sick leave, and to service other debt obligations.
- $10 billion would be provided to support the expanded EIDL program.

**Small Business Debt Relief**
- The bill would require SBA to pay all principal, interest, and fees on all existing SBA loan products, including 7(a), Community Advantage, 504, and Microloan programs, for six months to provide relief to small businesses negatively affected by COVID-19.
- $17 billion would be provided to implement this section.