

# ACSI Legal Update on COVID-19 Issues for Schools

**Tom Cathey – Loan Forgiveness and Deferred Taxes**

**Philip Scott – Unemployment Coverage Update**

**George Tryfiates – The CARES Act and Equitable  
Services**

April 20, 2020





## **Disclaimer**

This presentation is designed to provide accurate and authoritative information regarding the subject matter covered. It is distributed with the understanding ACSI is not engaged in rendering legal, financial or other professional services. The purpose of this presentation is educational. If legal advice or other professional assistance is required, the services of a competent professional should be sought.

## Legal and Legislative Coronavirus Resources

ACSI Legal Legislative team is actively looking at issues related to the Coronavirus COVID-19 outbreak that impact Christian education. This page is designed to give you current, relevant information and is updated as new information unfolds.

Submit your question to our Legal Legislative Team


- Thomas J. Cathey, Ed.D., Director for Legal/Legislative Issues
- Philip Scott, Esq., In-House Counsel to ACSI
- George Tryfiates, Director of Government Affairs

### CARES Act Guidance


- **NEW** 4/13/20 - JDSupra - [PPP Loan Forgiveness: Further Guidance on the Math](#)
- **NEW** 4/7/20 - Nutter - [3 Steps \(and a Calculator\) to Help Determine Forgiveness for Your PPP Loan](#)
- 4/14/20 - CapinCrouse - [IRS Releases Guidance Regarding Deferral of Employer Payroll Taxes Under the CARES Act](#)
- 4/13/20 - USDE - [CARES Act Education Stabilization Fund](#)
- 4/10/20 - Taylor English - [Employee Retention Tax Credit Under The CARES Act: Alternative Tool for Businesses Not Utilizing The PPP](#)
- 4/08/20 - ACSI - [Memo to School Leaders on CARES Act Education Stabilization Fund](#)
- 4/08/20 - ACSI - [Sample Letter Schools Can Adapt for Their LEA](#)
- 4/08/20 - SBA - [FAQ Regarding PPP Loans](#)
- 4/07/20 - SBA - [COVID-19 Economic Injury Disaster Loan Application](#)
- 4/05/20 - Key Guidance - ACSI - [CARES Act Guidance for Faith Based Schools: Additional SBA Guidance on PPP and EIDL Programs](#)
- 4/04/20 - Key Guidance - SBA - [FAQ Regarding Participation of Faith-Based Organizations in the PPP and EIDL Loan Programs](#)
- 4/5/20 - UPDATED ACSI - [The Coronavirus Aid, Relief, and Economic Security \(CARES\) Act Update](#)
- 4/06/20 - Nussbaum Speir Gleason - [The SBA Addresses Religious Liberty Concerns Around Coronavirus-Related Government Aid](#)
- 4/03/20 - SBA - [SBA Interim Final Rule on Affiliated Churches and Schools](#)
- 4/03/20 - CapinCrouse - [Summary of Paycheck Protection Program Loan Regulations](#)
- 4/02/20 - ACSI - [SBA PPP and Christian Schools Guidance on Loan Application and Forgiveness](#)
- 3/31/20 - [US Treasury Guidance](#) includes SBA PPP Loan Application
- 3/30/20 - Sherman & Howard - [CARES Act: Key Provisions Regarding SBA Disaster Relief](#)
- 3/30/20 - Sherman & Howard - [CARES Act: Key Differences: PPP and EIDL](#)
- 3/30/20 - Natl. Council of Nonprofits - [Loans Available for Nonprofits in the CARES Act](#)
- 3/27/20 - Key Guidance - Batts Morrison - [CARES Act Approved by Senate Pending House Approval and President Signature](#)

### Tweets by @ACSILegalLegl


ACSI Legal Legl Retweeted

 **ACSI USA**  
@ACSIUSA  
Press Release: ACSI Increasing Advocacy Presence in D.C.  
Philip Scott to assume new role as Senior Counsel for Policy and Advocacy  
@ACSILegalLegl #christianlegal #christianschool  
christiannewswire.com/news/865678374...

Apr 13, 2020

 **ACSI Legal Legl**  
@ACSILegalLegl  
SBA Just released robust religious liberty protections for the CARES Act loan programs! Read our take and the guidance itself on our website. [community.acsi.org/coronavirusres...](#)

Apr 4, 2020

 **ACSI Legal Legl**  
@ACSILegalLegl  
We just posted new guidance on religious liberties and implications of the CARES Act

Embed View on Twitter

# CARES Act

- **Deferral of Employer Payroll Taxes under the CARES Act**
  - The deferral applies to the FICA portion of employer payroll taxes only. (not medicare taxes)
  - Deferral of the deposit is permitted beginning March 27, 2020.
  - IRS is revising Form 941 to reflect the deferral process. More guidance coming on the handling of deposits due between March 27 and March 31, 2020.
  - Recipients of the PPP Loan may defer the payroll taxes due from March 27, 2020 and **the date the loan forgiveness is granted.**
  - 50% of the deferred taxes will be due on December 31, 2021 and the rest on December 31, 2022.

# CARES ACT and PPP Loan Forgiveness

- The 8-week period begins the day the PPP loan hits your account.
- Plan your budget now on how you will spend those funds.
- Deposit the loan amount into a separate checking or savings account.
- Spend as much as you can on payroll costs over the 8-week period. (at least 75%)
- The amount you payout in approved costs for the 8-week period will determine your maximum forgiveness.
- Measure the number of full-time equivalents (FTE) during the 8-week period.
  - Total hours worked in 8 weeks divided by 8 weeks = # of hours per week divided by 40= Average FTE
  - $1472 \text{ hours} / 8 \text{ weeks} = 184 \text{ hrs/week} / 40 = 4.6 \text{ FTE}$

# CARES ACT and PPP Loan Forgiveness

- Compare your average FTE to one of two baselines:
  - 2/15/19 – 6/30/19 or 1/1/20 – 2/29/20 (whichever has fewer FTEs).
- If you have 10% lower FTEs then your forgiveness of the loan will be reduced by 10%.
- Forgiveness can also be reduced, dollar for dollar for major reductions in wages over the 8 weeks.
  - Identify all the employees you employed in the 8 weeks that were also employed during 2019. (salaries under \$100,000)
  - If any of the employees has their salary drop during the 8-week period more than 25%, then anything above the 25% will reduce your forgiveness.

# CARES ACT and PPP Loan Forgiveness

- The “FIX” for headcount reduction
  - If by June 30, 2020, you bring FTE levels back up to where they were at February 15, 2020, that will excuse whatever forgiveness was attributable to a drop in headcount between February 15 and April 26, 2020.
- The “FIX” for salary/wage level reduction
  - By June 30, 2020, you restored salary/wage levels of those making below \$100,000 to at least the existing levels that occurred between February 15 and April 26, 2020, it eliminates any reduction in forgiveness regarding salaries/wages.

# Unemployment Insurance Coverage

## Standard System Overview

Where do religious schools fit?

- 3 models:
  - Treated like a for-profit
  - Self-insured, reimbursement program
  - Exempt from system entirely

## Special Circumstances

- Presidential declaration of a major disaster
- Opens up the Disaster Unemployment Assistance program
- New York, California, Washington – already declared



# Unemployment Insurance Coverage

## Standard System Overview

Issues and Qualifications – for employees

- Distinction between furlough and layoff
  - Not much, based on pay
  - Usually requires 1-week of no pay
    - New programs require waiver of 1-week standard

# Unemployment Insurance Coverage

## **CARES Act and Families First Coronavirus Response Act Modifications**

- Pandemic Unemployment Assistance (PUA) Program
  - New COVID-19 reasons for UI coverage.
  - Expands to cover up to 39 weeks
  - Covers employers not typically covered – see Tom’s slides
- Federal Pandemic Unemployment Compensation (PUC)
  - Adds an additional \$600 per week – allows for stacking of benefits so individual could make more on UI
- Short-Time Compensation program – pro-rated UI for reduced hours.

# Unemployment Insurance Coverage

## **Pandemic Unemployment Assistance (PUA) Program**

- Have been diagnosed with or symptoms of COVID-19
- Have a household member diagnosed with COVID-19.
- Have primary caregiving responsibility for a child or other person in the household who is unable to attend school or another facility and the school or facility care is required for the individual to work.
- Quarantine, either medical or public health, and cannot reach work.
- Have your place of employment closed as a direct result of COVID-19.

# Unemployment Insurance Coverage

## Takeaways

- Federal program but each state has to separately adopt and implement
- Many/most are backdating the benefits to February
- Some states treating these programs as separate from UI so be aware of that.
- States still working on implementing
  - Ex. Colorado just launched COVID-19 expanded coverage on 4/20.

# The CARES Act – K-12 Relief

## **The Coronavirus Aid, Relief, and Economic Security (CARES) Act**

March 27, 2020

*Creates Education Stabilization Fund with \$30.75 billion in three funds*

- ❖ Sec. 18002 – Governor’s Emergency Education Relief Fund (9.8%)
- ❖ Sec. 18003 – Elementary and Secondary School Emergency Relief Fund (43.9%)
- ❖ Sec. 18004 – Higher Education Emergency Relief Fund (46.3%)

# The CARES Act – K-12 Relief

- ❖ Two Funds in the Education Stabilization Fund apply to elementary/secondary schools. Both require the local educational agency (LEA) to make equitable services available to non-public schools in the same manner as provided under section [1117 of the Elementary and Secondary Education Act \(ESEA\)](#).
- ❖ The local educational agency (LEA)/school district is required to consult non-public schools.
- ❖ The “control of funds” is maintained by the LEA/school district.
- ❖ The funds are available through September 30, 2021.

# The CARES Act & Equitable Services

## Sec. 18002 – Governor’s Emergency Education Relief Fund (9.8%)

Allows the Governor “to 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...the provision of child care and early childhood education, social and emotional support, and the protection of education-related jobs.” (Sec. 18002(c)(3)). *[(1) LEAs and (2) higher education institutions ... which are “most significantly impacted”.]*

## Sec. 18003 – Elementary and Secondary School Emergency Relief Fund (43.9%)

- The allocation of funds to the states is based on the same proportion each state received under Title IA in the most recent fiscal year.
- The law authorizes twelve uses for funds.

# The CARES Act & Equitable Services

- There is still no guidance (as of April 20, 2020) from USDE on the equitable services process for CARES Act Governor's or Schools funds of ESF.
- Some states are issuing their own – some good and some bad. Please push back on bad guidelines. Don't give up.
- Equitable services for both will flow through the LEA. Equitable services requires consultation with non-public schools.
- We've advised the USDE that there may be far more interest in participating in emergency programs than under standard programs. The idea being to alert LEAs to this reality.



# The CARES Act & Equitable Services

## Things to think about:

- The CARES Act ESF is not a Title I program; that is simply the way funds are allocated.
- *Your previous non-participation in title services under ESEA is not relevant. This is a new program subject to new consultation.*
- *If you are beginning consultation for next year's title services, that should be done separately! If not two separate meetings, it should be two separate agenda items.*
- *Make sure the LEA counts all of your children in their grant application. All children are eligible to participate in the program, not just Title I children. This is in dispute.*
- Tell LEA that you want to be consulted with prior to your applying. If you do not know the key personnel in your LEA, your neighboring schools may help.
- Talk to your LEA about what you need *before* the LEA applies for the separate Governor's Emergency Education Relief Fund grant.
- The services are determined by the consultation, not by being "consulted" by the LEA.

# Education Stabilization Fund (ESF)

## **New Website from US Department of Education**

Education Stabilization Fund (EFS) webpage (as of 4/13/20):

<https://oese.ed.gov/offices/Education-Stabilization-Fund/>

The USDE has an ongoing Coronavirus webpage as well:

<https://www.ed.gov/coronavirus?>

# The CARES Act's ESF & Equitable Services

ACSI's Memo to School Leaders

[Memo to School Leaders on CARES Act Education Stabilization Fund](#)

Sample Letter for your LEA

[Sample Letter Schools Can Adapt for Their LEA](#)

# The CARES Act's ESF & Equitable Services

## WHAT YOU CAN DO NOW TO BE PREPARED

- 1) Begin drafting a needs assessment for your school, students and teachers.

The legislation lists twelve categories of permissible uses of the Schools funds found in Section 18003(d). State Educational Agencies (SEAs) and *Local Educational Agencies (LEAs) should not begin making plans for the dispersal of these funds until the US Department of Education releases guidance on implementation of the new law,* which is expected in the coming days. While a needs assessment is not required, just getting your needs on paper to share is the goal. Also, as much as possible, tie any requests to specific student needs.

# The CARES Act's ESF & Equitable Services

## WHAT YOU CAN DO NOW TO BE PREPARED

(cont'd)

2) Proactively reach out to your LEAs letting them know you look forward to consultation on the Education Stabilization Fund.

LEAs are required to consult with non-public schools. If you are a school that has not participated in ESSA or IDEA in the past, it's even more important to reach out proactively. Introduce yourself, tell them about your school.

# The CARES Act's ESF & Equitable Services

## WHAT YOU CAN DO NOW TO BE PREPARED

(cont'd)

3) Bring the actual bill text of Sections 18002, 18003 and 18005 with you to consultation (and the USDE Guidance, once released).

(Text is in the memo at the link in the above slide and on the ACSI Legal Legislative Coronavirus webpage).

# The CARES Act's ESF & Equitable Services

## Governor's Fund activities:

1. Contact your Governor, SEA, LEA – express the need. Sample letter provided on website.
  
2. Work with others wherever possible –
  - a. With other ACSI schools (ACSI-state)
  - b. Council for American Private Education (CAPE). Website: [www.capenet.org](http://www.capenet.org). State chapters: <http://capenet.org/states.html>
  - c. State Catholic Conferences and other religious schools. Agudath Israel has regional leaders.

# CARES Act – 18001(a)

**Off the top discretionary funding for “highest burden” states:**

## **Sec. 18001(a)(3)**

[(1) is for “outlying areas”; (2) is for Bureau of Indian Education]

(3) 1 percent for grants to States with the highest coronavirus burden to support activities under this heading in this Act, for which the Secretary shall issue a notice inviting applications not later than 30 days of enactment of this Act and approve or deny applications not later than 30 days after receipt.



# CARES Act – 18001(a)

- If you are in a “highest burden” state, this may be another area assistance for you to be prepared to pursue.
- It’s up to the Secretary and to the state. It’s discretionary. It is also an *Education* Stabilization Fund.
- There are no guidelines yet.
- **The Secretary must issue a notice inviting applications within 30 days of enactment (March 27). Today is April 20.**
- The Secretary must then approve or deny applications within 30 days of receipt.
- This is only for states with the “highest coronavirus burden” -- there is no definition for that. Roughly \$300,000,000 divided by...? (NY, LA, NJ?)

# Legislative Outlook – as of April 20, 2020

- Congress is meeting in pro forma sessions until May 4, 2020.
- There's talk of a "deal" to replenish the PPP, but as of this morning everything I'm hearing is that there is no deal yet – media reports (last night and this morning) to the contrary notwithstanding.
- A Phase IV bill is also being negotiated. Infrastructure? States?
- To help keep it straight: the CARES Act was Phase III. Replenishing the PPP funds is sometimes called CARES Act 2.0.
- The challenge of a legislative update is that it can change as you speak...

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