

ACSI Legal Update on COVID-19 Issues for Schools

George Tryfiates – New CARES Act Legislation

Tom Cathey – FFCRA, PPP Loans and EIDL

Philip Scott – State Specific Info and Reopening

April 27, 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

Legislative Update and Outlook – April 27, 2020

Paycheck Protection Program and Health Care Enhancement Act

The President signed the **Paycheck Protection Program and Health Care Enhancement Act (PPHCEA)** into law on Friday, April 24, 2020.

(Passed the Senate, Tuesday, April 21; Passed the House, Thursday, April 23).

What the PPHCEA does:

- Adds \$310 billion to the Paycheck Protection Program
 - \$60 billion of this is reserved for community banks and small lenders
- Adds \$60 billion to the Economic Injury Disaster Loan (EIDL) program
- Provides \$75 billion to hospitals/healthcare providers
- Provides \$25 billion for testing

Legislative Update and Outlook – April 27, 2020

- **Congress is meeting in pro forma sessions until May 4, 2020.**
- **A Phase IV bill is also being negotiated. Infrastructure? States?**

Democrats have pushed for the need for more funding for state and local governments grappling with the virus. Trump tweeted this week that he envisioned the next package including fiscal relief for state and local governments, funding for infrastructure investments and a payroll tax cut. The Hill, 4/24/2020

ACSI Focus:

- Working on Phase IV bill right now in meetings with Hill and Administration
- Pray for our efforts – focused on broadening options for affordability; inclusion of non-public schools; and, protections against FFA
- Phase IV expected to be the first order of business when Congress returns May 4, 2020.

The CARES Act – Education Stabilization Fund (ESF)

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

March 27, 2020

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

- ❖ Sec. 18001 – Discretionary Fund (2% off the top)
- ❖ 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%)
- ❖ Sec. 18005 – “how to allocate funds” / the method, not the amount.

The CARES Act – Education Stabilization Fund (ESF)

Sec. 18001 – Discretionary Funds (2% off the top) for most affected

18001(a)(1) – 0.5% for “outlying areas”

18001(a)(2) – 0.5% for Bureau of Indian Education

18001(a)(3) – 1% to States with the highest coronavirus burden

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

18001(c)(1) – grants to LEAs most significantly impacted

18001(c)(2) – grants to higher education most significantly impacted

18003(c)(3) – “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. 18003 – Elementary & 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. Same again to LEAs.
- The law authorizes twelve uses for funds.

The CARES Act – Education Stabilization Fund (ESF)

ALLOCATIONS:

- Governor's Education Emergency Relief Fund (GEERF) allocation of the 9.8% is 60% on the basis of their relative population of individuals aged 5 through 24 and 40% on the basis of their relative number of children counted under section 1124(c) of the ESEA of 1965.
- Elementary and Secondary School Emergency Relief Fund (ESSERF) allocation of the 43.9% to the SEA is based on Title IA allocation to the SEA; from the SEA to the LEA based on the Title IA allocation of the LEA.

METHOD:

Section 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.

The CARES Act – Education Stabilization Fund (ESF)

UPDATE (4/27/2020)

- Notices inviting applications have gone out for GEERF (April 14) and ESSERF (April 23)
- **Guidance is still to come** – maybe today?
- USDE stakeholders call last week, April 23, 2020

What should schools do?

Continue to reach out to Governors and LEAs (see Memo to School Leaders), per earlier advice. Earlier webinar slide decks have detailed information.

The CARES Act – Education Stabilization Fund (ESF)

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 – Education Stabilization Fund (ESF)

US Department of Education Key Websites

Education Stabilization Fund (ESF) 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?>

Families First Coronavirus Act

- All employers are required to offer the Emergency Sick Leave and Emergency Family Medical Leave to its employees as of April 1, 2020.
- Guidance we have written is on the LL Resource webpage
- The Department of Labor continues to add guidance to their FAQs on a weekly basis.
- They now are to 88 FAQs.
- <https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

CARES Act

- It is critical that if you have already applied for a PPP loan check with your lender, as the [Interim Final Rule](#) states explicitly, you can only apply for one PPP Loan.
- Contact your bank to see if they still have your application and whether or not it will be submitted when the SBA begins accepting new PPP loan applications.
- If you have not applied for PPP loans, you can start your application now.

CARES Act

- New legislation adds \$60 billion to EIDL
 - **Economic Injury Disaster Loan (EIDL)**
 - A low-interest, fixed rate loan that can provide up to \$2 million in assistance for small businesses that can be used to pay immediate expenses during an emergency.
 - 500 employees or less
 - Eligible applicants who apply for an EIDL may request up to \$10,000 be immediately disbursed. The amount need not be repaid, regardless of the loan decision.
 - If approved the \$10,000 will be provided in 3 days.

State of the States – School Testing

- All 50 states and DC have asked for federal testing waivers.
- States with private school testing mandates in choice programs.
 - AL, AR, FL, GA, IL, IN, LA, ME, MD, MT, NV, NH, NC, OH, SC, SD, TN, UT, VA, WI, DC
 - Where does this leave your program? Make sure you know.
 - Reach out to your state CAPE or private school association.

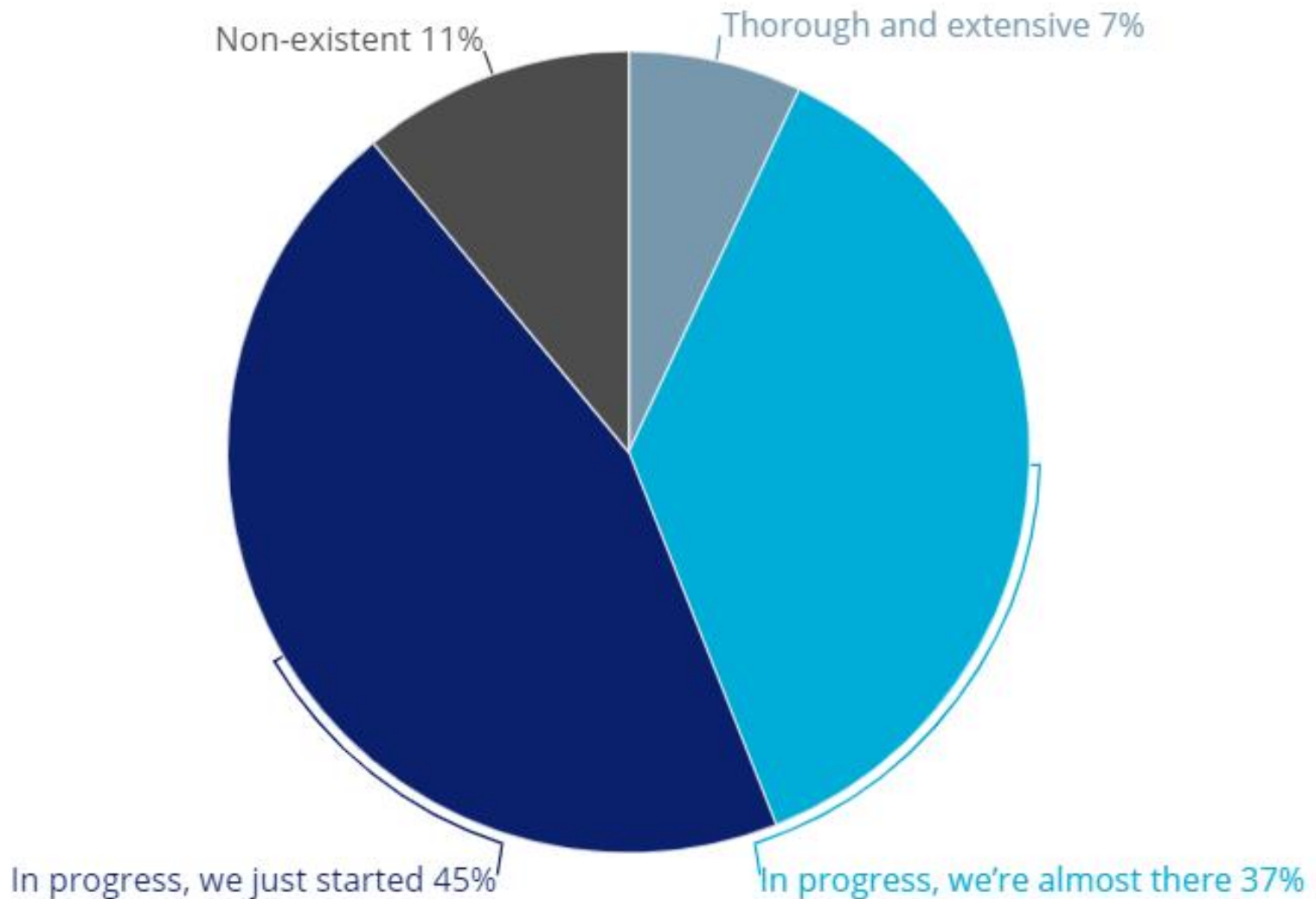
State of the States – School Closures

- All 50 states and DC have closure orders or recommendations of closure
 - Local authority/Recommendations – ME, SD, ID, TN, CA
 - Orders to expire within next two weeks – WY, MD, NJ, NY, CT, MT
 - Closed indefinitely - ND
- Returning to school - recommendations based on legal risk
 - If your public schools are closed, then remain closed.
 - If your public schools reopen,
 - Consider reopening an option, not mandatory.
 - You must have a reopening school plan and get approval by the local county health department.
 - Put parents on notice and give them a waiver to sign.

Returning to School

- Legal Risk – You don't want to fail meeting a community standard. Standards can be set by:
 - Federal – CDC, US Dept of Educ, etc.
 - State/local authority – health department, governor, public school system (especially if there is a template or state standard).
 - Something you promise – ex. screen all students everyday.
 - Professional organization – AMA sets standards for school screenings.
 - Community at large
- Standards to be on the lookout for
 - President's 3 Phase Plan, other federal guidance
 - State regional pacts – (WA, OR, CA) (NY, NJ, CT, RI, MA, PA, DE)
 - State Dept. of Education plans – Southern Regional Education Board

Describe the status of your district's plans for handling COVID in 2020-2021 school year?



Returning to School

Things to consider

- A new normal until vaccine or medications are developed.
- Start planning for school closures or January starts for next year – Ex. CA, CO, universities.
 - If this happens, how will you do assessments with students?
- What does returning to school look like:
 - Modified bus routes to accommodate fewer riders
 - Meals served in classrooms/staggered lunches
 - Staggered stop/end times, some students/classes continue distant learning.
 - Smaller class sizes, student shifts (morning and afternoon cohorts) or university modeling
 - Parent, volunteer and vendor access and screening
 - Ongoing and regular health screenings for staff and students

Returning to School

Things to consider (continued)

- Modified policies around absences, when do we send a student home and for how long
- What does athletics and other events look like
- What kind of PPE should be used and by who
- Robust cleaning schedules and increased budget spend
- How do we improve/expand our distant learning abilities, does it become an optional path
- Should formal educational efforts continue through the Summer
- Should we create more robust tutoring/reinforcement opportunities
- How do we do social distancing - hallway/classroom transitions between periods, enrichment classes, recess
- Spiritual and emotional well-being

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