

**CAPE member
organizations:**

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American Montessori
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Association Montessori
International—USA
Association of Christian
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Association of Christian
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Christian Schools
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Council of Islamic Schools
in North America
Council on Educational
Standards and
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Evangelical Lutheran
Church in America
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of America
Jesuit Schools Network
Lutheran Church—
Missouri Synod
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Educational Fellowship
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United States Conference
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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...



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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.”²
- 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.³ 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.

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.



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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.

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Affiliated State
Organizations

March 13, 2020

The Honorable Lamar Alexander
Chairman
Committee on Health, Education,
Labor and Pensions
United States Senate
428 Senate Dirksen Office Building
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
Committee on Health, Education,
Labor and Pensions
United States Senate
428 Senate Dirksen Office Building
Washington, DC 20510

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,

A handwritten signature in black ink, appearing to read "Michael Schuttloffel". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping horizontal stroke at the end.

Michael Schuttloffel
Executive Director

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Affiliated State
Organizations

March 18, 2020

The Honorable Richard Shelby
Chairman
Committee on Appropriations
United States Senate
Room S-128, The Capitol
Washington, DC 20510

The Honorable Lamar Alexander
Chairman
Committee on Health, Education,
Labor and Pensions
United States Senate
428 Senate Dirksen Office Building
Washington, DC 20510

The Honorable Patrick Leahy
Vice Chairman
Committee on Appropriations
United States Senate
Room S-128, The Capitol
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
Committee on Health, Education,
Labor and Pensions
United States Senate
428 Senate Dirksen Office Building
Washington, DC 20510

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 Schuttloffel
Executive Director

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March 20, 2020

The Honorable Lamar Alexander
Chairman
Committee on Health, Education,
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United States Senate
428 Senate Dirksen Office Building
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The Honorable Patty Murray
Ranking Member
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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:

(A) The Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.).

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 deferment 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 deferment 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

Keeping American Workers Paid and Employed Act

Chairman Marco Rubio (R-FL), Ranking Member Ben Cardin (D-MD),
Chairman Susan Collins (R-ME), and Senator Jeanne Shaheen (D-NH)

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.