



## AAU SUMMARY OF THE BIPARTISAN EMERGENCY CORONAVIRUS RELIEF ACT OF 2020

*Last Updated, December 16, 2020*

### **GENERAL OVERVIEW:**

On Monday, December 14, a bipartisan group of Senators introduced the “Emergency Coronavirus Relief Act of 2020” and the “Bipartisan State and Local Support and Small Business Protection Act of 2020,” a \$908 billion package of COVID-19 relief. Due to disagreements over funding for state and local governments and liability protections, the legislation was split into two bills with the “controversial provisions” separated from the others. The legislation could be tied to the \$1.4 billion omnibus spending package for FY21 that lawmakers hope to vote on this week.

### **STUDENT AND HIGHER EDUCATION OVERVIEW:**

The bill provides \$82 billion for education providers and is funded in three relief funds, similar to education funding in the CARES Act. Of the \$82 billion, about 1% is set aside to go to outlying areas and Bureau of Indian Education

**Governors Emergency Relief Education Fund:** The bill provides \$7.5 billion for Governors Emergency Education Relief Fund with \$2.5 billion for “Emergency Assistance to Non-Public School Grants.” These funds may be used to provide emergency support the most significantly impacted a) local educational agencies b) institutions of higher education c) community and technical colleges d) childcare, early childhood education e) any other higher education institution, local educational agency, or education-related entity within the state that the governor deems essential.

Funds may not be used to: provide financial assistance to scholarship granting organizations or to provide vouchers, tuition tax credit programs, education savings accounts, scholarships, or tuition assistance programs

**Elementary and Secondary School (K-12) Emergency Relief Fund:** The bill provides \$54 billion for Elementary and Secondary School Emergency Relief Fund.

**Higher Education Emergency Relief Fund:** The bill provides \$20 billion for the Higher Education Emergency Relief Fund. Of the \$20 billion:

- 85% (\$17 billion) is provided to public and nonprofit higher education institutions by the following formula: 37.5% based on FTE Pell recipients, 37.5% based on headcount Pell recipients, 12.5% based on overall FTE, 12.5% based on overall headcount.

- 10% (\$2 billion) is provided under Title III and Title V to HBCUs and MSIs
- 5% (\$1 billion) is set aside for a competitive grant program for higher education institutions within the Fund for the Improvement of Postsecondary Education (FIPSE). Through an application process, the Secretary will determine the institutions with the greatest unmet needs.

The 85% portion, this funding is to be split 50/50 between institutions and students:

*Allowable Uses:* Of the 85% or approximately \$17 billion portion of funding, an institution must provide at least 50% of its funding to students through financial aid grants. This includes students exclusively enrolled in distance education. These financial aid grants can be used for the student’s cost of attendance or for emergency costs that arise due to the coronavirus such as food, housing, course materials, technology health care, or childcare. 50% of the funds can also be used to defray expenses associated with coronavirus including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, and payroll.

#### *Eligibility*

Institutions:

- **Endowment Tax:** Institutions that paid the endowment excise tax in 2019 or 2020 are barred from receiving the institutional share of the allocation and therefore may only use its funding for student grants.
- **Nonprofits/for-profits:** As noted above, the 85% pot (\$17 billion) is provided to public and nonprofit higher education institutions only.

Students:

- **Eligibility:** Determined “solely by institution.” [Note: seeking additional clarification.]

**Maintenance of Effort:** This provision requires that in applying for funds in section 5102 (Governor’s Emergency Education Relief Fund) or section 5103 (Elementary and Secondary School Emergency Relief Fund), a state must assure that it will maintain state support for elementary and secondary education and higher education (“which shall include State funding to institutions of higher education and state need-based financial aid, and shall not include support for capital projects or for research and development or tuition and fees paid by students”) in FY21 and FY22 that equals at least the levels of support of the average of the last three fiscal years.

- **Waiver Authority:** The Secretary can waive this requirement for states that have “experienced a precipitous decline in financial resources.”

**Student Loan Forbearance:** The bill includes an extension of the student loan forbearance provisions created in CARES and extended by Executive Order, from the current expiration date of January 31, 2021 through April 1, 2021.

#### **NATIONAL INSTITUTES OF HEALTH:**

The legislation provides \$700 million to the National Institutes of Health for research related to COVID-19.

## **AAU SUMMARY OF THE BIPARTISAN STATE AND LOCAL SUPPORT AND SMALL BUSINESS PROTECTION ACT OF 2020**

### **STATE, LOCAL, AND TRIBAL ASSISTANCE**

The legislation provides \$152 billion in aid to states and local governments through the Coronavirus Relief Fund and \$8 billion to Tribal entities.

*Coronavirus Relief Fund:* One third (\$50.16 billion) is to be distributed based on each state's proportion to the U.S. population and two thirds (\$100.32 billion) is to be distributed based on the proportion of each state's revenue losses relative to the total revenue losses of all states nationwide. Each state is entitled to a minimum of \$500 million. The state funding would be distributed in three tranches:

- First tranche: \$50.66 billion from the population-based funding will be disbursed to states within 30 days of enactment; Needs-based funding that tracks actual revenue losses incurred by state and local governments from April 1, 2020 to Sept 30, 2020 relative to the same period in 2019 will be disbursed within 30 days of enactment
- Second tranche: Needs-based funding for revenue losses incurred by state and local governments from Oct 1, 2020-March 31, 2020 relative to the same period in 2019 will be disbursed no later than June 1. 52 billion is expected to be disbursed in this tranche.
- Third tranche: At least \$10 billion must be set aside for this final tranche. This is a needs-based allocation that provides remaining funding based on the proportional revenue losses of each state from April 1, 2021 to June 30, 2021 relative to the same period in 2019.

*Tribal Fund:* \$8 billion is to be reserved for Tribal entities to be allocated in the following formula: 60 percent of the amount reserved based on the relative population of each Tribal entity and 40 percent based on the number of employees of each Tribal entity that is a Tribal government or Tribal organization.

The legislation extends the deadline for spending CARES Act Coronavirus Relief Fund aid through December 31, 2021.

### **LIABILITY RELIEF**

*Liability Protections for Individuals and Entities Engaged in Businesses, Services, Activities, or Accommodations ("Back to Work Act")*

- Creates a nationwide baseline gross negligence standard for COVID-19 exposure, medical malpractice, and workplace testing claims.
- Gives U.S. district courts "concurrent original jurisdiction" over coronavirus-related actions. Plaintiffs may file claims in state courts, but defendants can remove those cases to federal courts. Plaintiffs must

“plead with particularity” (i.e., include substantial factual information in their complaints regarding the source/cause of their alleged injuries).

- Applies to claims alleging COVID-19-related personal injuries that occurred on or after December 1, 2019 and before *the later of* a year after the enactment of the Back to Work Act or the end of the declared coronavirus public health emergency.
- Limitations on liability for medical malpractice claims include claims arising from acts or omissions in the course of arranging for or providing the care of any individual who seeks or receives services from a health care provider *for any purpose* during the period of the federal emergency declaration concerning coronavirus, “if such provider’s decisions or activities with respect to such individual are impacted as a result of coronavirus.” In other words, the legislation appears to cover claims stemming from the provision (or non-provision) of non-coronavirus treatments that were adversely impacted because of, say, hospital bed shortages due to coronavirus.
- Preempts and supersedes any Federal, State, or Tribal law under a standard that is *less stringent* than a standard of gross negligence.
- Does not preempt or supersede worker’s compensation laws. However, the bill also provides that no employer will be subject to any enforcement proceeding or liability under a covered federal employment law if the employer (a) was relying on and substantially followed applicable government standards & guidance; (b) knew of the obligation under the relevant provision; and (c) attempted to satisfy any such obligation in a variety of ways.
- Empowers the Attorney General to investigate and bring civil actions against individuals or entities who are engaging in a pattern or practice of sending demand letters seeking payment in exchange for not bringing (meritless) coronavirus-related actions.