

Education

The CAA and COVID-19 Relief Funds for Education Institutions



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The Consolidated Appropriations Act, 2021 (the CAA), signed into law on December 27, 2020, includes a number of important provisions relevant to institutions of higher learning and elementary and secondary schools. This alert summarizes the key education-related terms of the new legislation, focusing on the coronavirus relief funds, appropriations for the Department of Education for fiscal-year 2021, and the simplification of the Free Application for Federal Student Aid (FAFSA).

COVID-19 Relief

In addition to the 2021 fiscal-year appropriations of \$73.5 billion for the Department of Education (discussed in more detail below), the CAA provides nearly \$82 billion to address the unique educational challenges created by the coronavirus,^[1] such as the need for “PPE, cleaning supplies, learning materials, and more.”^[2] These funds include \$54.3 billion for elementary and secondary education, \$22.7 billion for colleges and universities, and around \$4 billion to be allocated by governors at their discretion. The remaining \$1 billion is reserved for supplemental awards to United States commonwealths and territories and to Bureau of Indian Education-operated and funded schools as well as Tribal Colleges and Universities.^[3]

Importantly, the receipt of these funds is conditional, requiring all institutions that receive funds to agree to continue paying, “to the extent practicable,” their employees and contractors during periods of disruption or closure related to COVID-19.^[4] This likely does not mean that no employees can be fired or furloughed, but rather requires that an institution make a reasonable, good faith effort to keep and pay employees. While the CAA—like the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which contained an identical condition—does not define or further elaborate on the meaning of “to the greatest extent practicable,” similar language has been interpreted in other statutes and authoritative texts as introducing the concept of reasonableness.^[5] The National Association of Student Financial Aid Administrators, for example, shares this interpretation of the “to the greatest extent practicable,” as it was used in the CARES Act. In a published Q&A, it stated that this language “is an acknowledgement by the US Department of Education (ED) that it is unreasonable to expect an institution to continue to pay all employees/contractors during a national crisis. If an institution is making a *good faith effort* to pay employees to the extent possible, and can document accordingly, the institution should not be concerned about this provision.”^[6]

As noted above, \$54.3 billion of the funds have been reserved for state educational agencies for supplemental elementary and secondary school emergency relief grants.^[7] Under the CAA, the Secretary must award funds under this section to states who submit an approved application by January 26, 2021.^[8] The Secretary is instructed to allocate funds to each state based on the number and percentage of children from low-income families.^[9] The CAA requires that the states then allocate at least 90% of the funds awarded under this section to local education agencies in the state in proportion to the number and percentage of children from low-income families.^[10] The remaining 10%

is left for the states to allocate to “emergency needs,” as determined by the state educational agency, to address issues related to coronavirus.^[11]

Additionally, more than a quarter of the funds, \$22.7 billion, is to be given to colleges and universities that apply to receive these funds.^[12] The vast majority of these funds are earmarked for pandemic response. Specifically, \$20.9 billion is to be given to higher education institutions “to prevent, prepare for, and respond to coronavirus.”^[13] Approximately \$1.7 billion is to be given to institutions of higher education that serve high concentrations of minority students who, historically, have been underrepresented in higher education,^[14] to address needs related to the COVID-19 pandemic.^[15] The remaining \$113 million in funds may be allocated by the Secretary to institutions on the basis of the greatest unmet need.^[16] As was required under the CARES Act, once an institution of higher education has received funds under any of the allocations above, it must use at least half of the total amount it received for emergency financial aid grants to students.^[17]

Four billion dollars are available to state governors for distribution on the basis of need. As with the \$54.3 billion given for elementary and secondary school relief, the Secretary is instructed to award funds under this section to governors of states who submit an approved application by January 26, 2021. These funds will be assigned by the Secretary based on the state’s relative population of individuals aged 5 through 24 and their relative number of children below the poverty line. Of this \$4 billion, \$2.75 billion is reserved specifically for private schools.^[18] The CAA provides that the governors may then distribute funds at their discretion to educational agencies, including institutions of higher education.^[19] As then-Secretary Betsy DeVos put it, “the governors remain empowered to do what’s best for their students.”^[20]

In addition, the CAA extends a tax incentive for employer-paid student loan payments. Certain educational assistance payments made by an employer on behalf of an employee are excludable from the employee’s income up to a maximum amount of \$5,250 annually. The CARES Act added repayment of qualified education loans to the list of educational assistance payments that can be excluded from an employee’s income but limited the exclusion to employer payments made after March 27, 2020 and before January 1, 2021. The CAA extends the exclusion for the repayment of qualified education loans for five years—to employer repayment amounts of up to \$5,250 annually made before January 1, 2026. The goal of the provision, according to then-Secretary DeVos, is to “help students pay down their debts faster and keep employers engaged and invested in what students need to be successful.”^[21]

The CAA does not contain any student debt forgiveness or deferral provisions. Therefore, unless the Department of Education extends the deferral provisions again, student debt holders must resume making loan payments in February 2021.

FY2021 Appropriations

The CAA provides a total of \$73.5 billion in 2021 fiscal-year appropriations for the Department of Education, which is a \$785 million increase from fiscal year 2020. The appropriations include Elementary and Secondary Education Act formula grants, such as \$16.5 billion for Title I grants to school districts and \$14.1 billion for Individuals with Disabilities Education. It also provides \$10.7 billion for Head Start, \$1.3 billion for Career and Technical Education State Grants, and \$1.1 billion for Federal TRIO programs (federal outreach and student services programs designed to identify and provide services for individuals from disadvantaged backgrounds).

In addition, among other provisions, the CAA allocates over \$24.5 billion to support student financial assistance programs under the Higher Education Act (HEA) such as the federal Pell Grant and Work-Study programs.^[22] In part, this funds a \$150 increase in the maximum amount a student can receive in Pell Grants, bringing the total to \$6,495.^[23] The CAA also changes the formula for eligibility for Pell

Grants, which will allow more students to qualify for the maximum amount.^[24] Another \$2.5 billion is designated for carrying out various provisions of the HEA.^[25]

FAFSA Simplification

In addition to providing funds, the CAA amends and simplifies the FAFSA both in terms of the process of applying for and the predictability of the aid received; as then-Secretary DeVos put it, “mak[ing] the Federal Student Aid process more borrower-friendly from the very start.”^[26] Specifically, the CAA reduces the questions on the form from 108 to 36, and amends substantial portions of Section 471 of the HEA dealing with the calculation of student aid, required reporting for applying students, and outreach about the program.^[27] Supporters hope the change will decrease the barriers to higher education, especially for students from lower-income families, by making it clearer to students how much aid they can receive and what the process for obtaining aid is.

Conscious of the human, operational and financial strain that coronavirus is placing on businesses and organizations worldwide, Jenner & Block has assembled a multi-disciplinary Task Force to support clients as they navigate the legal and strategic challenges of the COVID-19 / Coronavirus situation.

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[1] Division M, 1851:6–9.

[2] U.S. Dept. of Edu., Secretary DeVos Releases Statement on Signing of COVID Relief Package (Dec. 28, 2020), <https://www.ed.gov/news/press-releases/secretary-devos-releases-statement-signing-covid-relief-package>.

[3] Division M, 1851–1852.

[4] Division M, 1883: 17–22.

[5] This interpretation is supported by the definitions and uses of “practicable” and its use in other phrases. For example, in another federal statute Congress provided: “*As soon as practicable* means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case.” Former 29 C.F.R. 825.302(b) (regarding notification requirements for foreseeable FMLA leave). This is consistent with the definition in Black’s Law Dictionary, which states that “as soon as practicable” means: “reasonable time.” It further states, “These words are not synonymous with ‘as soon as possible’; they mean ordinarily as soon as reasonably can be expected in the particular circumstances; or ‘in due time’.”

[6] See “[Trending AskRegs Q&A: What Does ‘To the Greatest Extent Possible’ Mean Under the CARES Act?](#)” (April 23, 2020) (emphasis added).

[7] Division M, 1866–1872.

[8] Division M, 1866:20–23.

[9] Division M, 1866–1867.

[10] Division M, 1867: 4–12.

[11] Division M, 1871: 16–23.

[12] Division M, 1872–1883.

[13] These funds will be allocated pursuant to a formula based on the institutions' relative share and total number of Federal Pell Grant recipients. The formula is also slightly different from that used in the CARES Act, accounting more for part-time students. The specific breakdown of how the funds will be allocated can be found in the CAA at Division M, 1872–1874; 1876–1877.

[14] Under the CAA, the eligibility of institutions for these funds is governed by the Higher Education Act, specifically Title III Parts A and B, Title V Parts A and B, and Title VII Part A Section 4. These institutions include, among others, American Indian tribally controlled colleges and universities; Alaska Native and Native Hawaiian-serving institutions; predominantly Black institutions; historically Black colleges and universities; Native American-serving, nontribal institutions; Asian American and Native American Pacific Islander-serving institutions; and Hispanic-serving institutions. See <https://www2.ed.gov/about/offices/list/ocr/edlite-minorityinst.html>.

[15] These funds will be allocated pursuant to a formula based on the number of Federal Pell Grant recipients attending the institution, the total number of students enrolled at the institution, and the institution's total endowment size. The specific breakdown of how those funds will be allocated can be found in the CAA at Division M, 1874–1876.

[16] Division M, 1876:9–23.

[17] Division M, 1880–1881.

[18] Division M, 1853–1854.

[19] Division M, 1853–1866.

[20] U.S. Dept. of Edu., Secretary DeVos Releases Statement on Signing of COVID Relief Package (Dec. 28, 2020), <https://www.ed.gov/news/press-releases/secretary-devos-releases-statement-signing-covid-relief-package>.

[21] U.S. Dept. of Edu., Secretary DeVos Releases Statement on Signing of COVID Relief Package (Dec. 28, 2020), <https://www.ed.gov/news/press-releases/secretary-devos-releases-statement-signing-covid-relief-package>.

[22] Division H, Title III, 1036:5–7.

[23] Division H, Title III, 1036: 8–9; Division FF, Title VII, Section 703, 2823: 3–13.

[24] Division FF, Title VII, Section 703, 2816–2817.

[25] Division H, Title III, 1040:12–16.

[26] U.S. Dept. of Edu., Secretary DeVos Releases Statement on Signing of COVID Relief Package (Dec. 28, 2020), <https://www.ed.gov/news/press-releases/secretary-devos-releases-statement-signing-covid-relief-package>.

[27] Division FF, Title VII, Sec. 701–703, at 2672–2837.



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