

SHORT SUMMARY OF THE SENATE REPUBLICAN COVID-19 SUPPLEMENTAL PACKAGE

The emergency spending package released by Senate Republicans on July 27, 2020, is comprised of multiple bills released simultaneously, known collectively as the Health, Economic Assistance, Liability Protection and Schools (HEALS) Act. This summary addresses the provisions of interest to higher education across these bills.

CORONAVIRUS RESPONSE ADDITIONAL SUPPLEMENTAL APPROPRIATIONS ACT

Title II Department of Commerce, NASA (p. 13)

- Includes \$1.5 billion for NASA across programs, including Science, Aeronautics, and Space Technology to “prevent, prepare for, and respond to coronavirus” and for expenses of modifications to terms and conditions of contracts and agreements.

Title IV Department of Energy, Office of Science (p.42)

- Includes \$306 million for the Department of Energy Office of Science to “prevent, prepare for, and response to coronavirus” for expenses related to research and development and related activities, including equipment, enabling technologies, and personnel associated with the operations of the DOE scientific user facilities.

Title VIII Department of Health and Human Services

National Institutes of Health (p. 67)

- Includes a total of \$15.5 billion for the National Institutes of Health (NIH) across various institutes “to prevent, prepare for, and respond to coronavirus.”

Department of Education, Institute of Education Sciences (p. 128)

- Includes \$65 million for the Institute of Education Sciences “to prevent, prepare for, and response to coronavirus” and for carrying out the National Assessment of Educational Progress Authorization Act.

Department of Education; Education Stabilization Fund (p. 101)

- Provides \$105 billion dollars in new emergency spending to support education. The money is divided as follows (Sec. 821):
 - › \$1.050 billion is reserved for the use of outlying territories (.5 percent of total) and Bureau of Indian Education programs (.5 percent of total).
 - › \$5.196 billion (5 percent of total) is provided for the Governor’s Emergency Education Relief Fund (Sec. 822)
 - › \$69.646 billion (67 percent of total) is reserved for the Elementary and Secondary School Emergency Relief Fund (Sec. 823)
 - › \$29.106 billion (28 percent of total) is reserved for the Higher Education Emergency Relief Fund (HEERF) (Sec. 824)

Sec. 822: Governor’s Emergency Education Relief Fund (p. 103)

- Allocated to states using a formula based on:
 - › 60 percent for the relative population of people ages 5-24 in the state, and
 - › 40 percent based on the relative population of children counted under Education and Secondary Education Act.
- Governors have wide discretion as to how to use these funds to support education within their states.

Sec. 824: Higher Education Emergency Relief Fund (or HEERF, p. 117)

- Divides the overall allocation of \$29.106 billion into three pools.

Sec. 824(a)(1): \$24.740 billion (85 percent of HEERF) allocated to all institutions (as defined under secs. 101 and 102(c) of the Higher Education Act [HEA]; p.117)

- The funding is allocated using a formula based on:
 - › “90 percent according to the relative share of full-time equivalent enrollment of Federal Pell Grant recipients who were not exclusively enrolled in distance education courses prior to the coronavirus emergency;” and
 - › “10 percent according to the relative share of full-time equivalent enrollment of students who were not Federal Pell Grant recipients who were not exclusively enrolled in distance education courses prior to the coronavirus emergency.”

Sec. 824(a)(2): \$2.911 billion (10 percent of HEERF) for HBCUs and other minority serving institutions (MSIs) (p. 118)

- These funds are in addition to the funds made available in the larger pool. They are allocated in the bill as follows:
 - › Funding allocated to Historically Black Colleges and Universities (HBCUs) (under part B of Title III) and master’s programs at HBCUs and Predominantly Black Institutions (PBIs) (under subpart 4 of part A of title VII) using three factors:
 - 70 percent on the basis of number of Pell Grant recipients relative to all Pell Grant recipients at such institutions;
 - 20 percent on the basis of total number of students enrolled relative to all enrolled students at such institutions; and
 - 10 percent “according to a ratio equivalent to the total endowment size at all eligible institutions at the end of the school year preceding the beginning of that fiscal year and the total endowment size at such institution.”
 - › For HBCU professional or graduate institutions (under section 326 of HEA), the Secretary shall allot to each eligible institution an amount in proportion to the award received in FY20 appropriations.
 - › For American Indian tribally-controlled colleges and universities (under section 316 of HEA), the Secretary shall allot funding according to the formula in section 316(d)(3) of the Higher Education Act.
 - › For PBIs (under section 318 of HEA), the Secretary shall allot funding according to the formula in section 318(e) of HEA.

Sec. 824(a)(3): \$1.455 billion (5 percent of HEERF) for grants to institutions with unmet need (p. 120)

- These grants are to be awarded to institutions with “the greatest unmet need” by the Secretary following the other forms of funding being disbursed.
- Available to proprietary institutions, unlike (a)(1) and (a)(2) funding.
- The Secretary must create an application process for the grants that prioritizes:
 - › Institutions that did not receive grants under (a)(1); and
 - › “otherwise demonstrate significant needs related to coronavirus that were not addressed” by other funding streams.

Sec. 824(b): Distribution (p. 121)

- All three pools of funding are to be disbursed using the G5 system as was done in the CARES Act.

Sec. 824(c): Uses of Funds (p. 121)

- Allows institutions to use the funds for two purposes:
 - › 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); and
 - › To “provide financial aid grants to students (including students exclusively enrolled in distance education), which may be used for any component of the student’s cost of attendance or for emergency costs that arise due to coronavirus.”

Sec. 824(d): Special Provisions (p. 121)

- Allows HBCUs and MSIs to repurpose funding received through grants made available under Titles III, V, and VII of HEA for coronavirus response purposes.
- Allows institutions that received and has remaining CARES Act funds to repurpose those for use under the conditions set forth in this bill.
- Contains a provision (similar to CARES) barring the use of funds made available through this bill to “fund contractors for the provision of pre-enrollment recruitment activities; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship.”
- For institutions that paid the endowment tax in 2019, their allocations are reduced by 50 percent and the funds made available can only be used to provide financial aid grants to students as defined in section 824(c)(2). Otherwise eligible institutions under section 448 of the HEA are exempted from this provision.

Sec. 824(e): Report (p. 123)

- Institutions receiving funds under this bill are required to report a detailed accounting of the use of funds no later than six months after receiving funding under this act.

Sec. 828: Maintenance of Effort (p. 127)

- Requires states seeking money under either the Governor’s Emergency Education Relief Fund or the Elementary and Secondary School Emergency Relief Fund to certify that they will maintain state support in FY2020 and FY2021 for elementary and secondary education and for higher education at levels proportionate to state funding in FY2019.

SAFELY BACK TO SCHOOL AND BACK TO WORK ACT

Title II—Education Provisions

Sec. 201: Simplifying Student Loan Repayment (p. 38)

- Has an effective date of October 1, 2020.
- For loans entering repayment on or after the effective date, allows two repayment options:
 - › A 10-year standard, fixed repayment plan; and
 - › A new income-dependent repayment plan
 - The income-dependent repayment plan requires payment of 10 percent of an individual or family’s income, less 150 percent of the poverty line.
 - While the maximum payment is not capped, beginning at an adjusted gross income exceeds 800 percent of the poverty line, the percentage calculated decreases by 5 percent for each percentage point that the borrower’s adjusted gross income exceeds 800 percent.
 - › Borrowers with Parent PLUS loans or Direct Consolidated Loans that discharged Parent PLUS loans are not eligible for the income-dependent repayment plan.
 - › There is no fixed end period for repayment in the income-dependent repayment plan.
 - › Loans are forgiven on the following terms:
 - After 20 years, for undergraduate-only loans.
 - After 25 years for graduate loans.
 - › Maintains Public Service Loan Forgiveness (PSLF), but does not allow borrowers in the income-dependent repayment plan to switch to a standard plan and receive credit for prior payments towards PSLF.

Sec. 209: Amendments to Education Provisions of Cares (p. 113)

- Amends Sec. 3403 of the CARES Act by waiving the share required of a nonprofit organization providing employment through Federal Work-Study (FWS). Extends the authority for institutions to reallocate funds between campus-based aid programs through the end of the 2020-21 award year or until a qualifying emergency expires, whichever is later.
- Amends Sec. 3505 of the CARES Act by clarifying that students otherwise eligible for FWS may still receive such an award for the equivalent period of one academic year, even if they are unable to fulfill the work obligation due to the physical closure of a campus.
- Amends Sec. 3510 of the CARES Act by extending the period of eligibility for Title IV aid at foreign institutions until the end of the qualifying emergency or the end of the 2020-21 award year, whichever is later.
- Amends Sec. 3513 of the CARES Act by limiting suspension of payments and interest past September 2020 only to borrowers who are eligible for in-school deferment.
- Amends Sec. 3519 of the CARES Act by waiving the requirement of full-time service for the purposes of fulfilling the terms of Perkins Loan discharge for teachers and other eligible professions.
- Amends Sec. 3520 of the CARES Act by excluding any funding made available under this bill from counting towards an individual’s or family’s Expected Family Contribution (EFC).
- Amends Sec. 3521 of the CARES Act by clarifying the ability of financial aid administrators to make adjustments using professional judgement to an individual’s or family’s income based on receiving documentation regarding that individual’s or family’s receipt of unemployment benefits. Also directs the Department of Education to adjust the model they use to audit institutions to reflect the rise in the use of professional judgement by financial aid administrators.

- Amends Sec. 3522 of the CARES Act by adding a question to the FAFSA that asks applicants if they (or relevant family members if appropriate) “has lost significant income earned from work due to the COVID–19 national emergency.” If the applicant says yes, they will be directed to contact their institution’s financial aid office to update their information.

AMERICAN WORKERS, FAMILIES, AND EMPLOYERS ASSISTANCE ACT

Sec. 211: Expanded Employee Retention Tax Credit (p. 71)

- Expands employee refundable payroll tax credit of up to 65 percent of \$10,000 in the wages paid to each employee by employers each quarter (and \$30,000 per calendar year) during the COVID-19 crisis.
- Employers whose operations were “fully or partially” suspended due to government orders related to COVID-19 are eligible for the credit.
- Coordinates the payroll tax credit and the Paycheck Protection Program by allowing employers to be eligible for both programs, with limitations to prevent overlapping. Public institutions remain ineligible for the tax credit.

Sec. 213: Safe and healthy workplace tax credit (p.82)

- Creates a refundable payroll tax credit equal to 50 percent of an employer’s “qualified employee protections expenses,” such as COVID-19 testing, personal protective equipment (PPE), cleaning supplies, workplace reconfiguration, and technology expenses.
- Qualified workplace expenses limited by cap per quarter based on an employer’s average number of employees.
- Public institutions ineligible for tax credit.

SAFE TO WORK ACT

Secs. 121-22: Exposure actions (pp. 26-34)

- Federal cause of action applicable to personal injury coronavirus exposure claims against almost any defendant including businesses, nonprofits, houses of worship, government agencies, associations, and public and private nonprofit higher education institutions and those who work for them.
- The liability provision preempts state laws that impose liability on broader grounds but will not preempt state laws that afford greater immunity.
- Defendant is not liable so long as defendant took reasonable efforts to comply with applicable public health standards or guidelines.
- To prevail, plaintiffs must show that the defendant was grossly negligent or engaged in willful misconduct, did not take reasonable steps to comply with relevant public health guidelines in place at the time the incident occurred, and that the defendant’s gross negligence or willful misconduct caused the plaintiff’s coronavirus injuries.

Secs. 141-42: Healthcare protections (pp. 34-39)

- Federal cause of action for coronavirus medical liability claims for personal injury caused by coronavirus health care services.
- Protection applies to health care providers and facilities.
- The liability provision preempts state laws that impose liability on broader grounds but will not preempt state laws that afford greater immunity.
- To recover, plaintiffs must show that their injuries were caused by defendant’s gross negligence or willful misconduct.

Secs. 161-64: Procedural and Substantive Provisions (pp. 39-54)

- Defendants will have the right to remove cases filed in state court to the federal district court in that area.
- Also contains various civil procedure provisions.
- One year statute of limitations and protections expire either at end of pandemic emergency or in October 2024.

Secs. 181-84: Labor and Employment Law Provisions (pp. 55-62)

- Protects employers from liability under various federal labor and employment laws for actions taken to comply with coronavirus-related public health guidance and regulations, and for employers that cannot offer requested reasonable accommodations because it would pose a serious risk to public health. Also, protects against claims for workplace coronavirus testing unless injuries caused by gross negligence or intentional misconduct.

CONTINUING SMALL BUSINESS RECOVERY AND PAYCHECK PROTECTION PROGRAM (PPP) ACT

Title I—Paycheck Protection Program Improvements Secs. 101-117 (p. 3)

- Sec. 101 expands the allowable and forgivable use of PPP funds to property damage due to looting or vandalism that occurred in 2020 not covered by insurance; PPE equipment and adaptive equipment for operating under COVID-19; and “covered business expenditure” that means “a payment for any business software or cloud computing service that facilitates business operations, product or service delivery, the processing, payment, or tracking of payroll expenses, human resources, sales and billing functions, or accounting or tracking of supplies, inventory, records and expenses.”
- Sec. 102 creates a lender safe harbor for lenders that relied on certification or documentation from borrowers for determining eligibility.
- Sec 103 would allow the borrower to elect a covered period between 8 weeks after origination and December 31, 2020.
- Sec. 104 would simplify the application for loans between \$150,000 and \$2 million.
- Sec. 106 creates a new “Paycheck Protection Program Second Draw Loans.” for eligible entities with a maximum 300 employees. \$190 billion is included for this program.
- Sec. 107 reduces the maximum amount for PPP loans from \$10 million to \$2 million, after the enactment of this act.
- Sec. 112 makes changes to the SBA 7 (a) Loan Guaranty Program for Recovery Sector Business concerns (this includes seasonal businesses and eligible businesses included in low-income census tracts).
- Sec. 113 expands PPP eligibility to 501 (c)(6) organizations.
- Sec. 114 prohibits any eligible entity from using proceeds of the loan for lobbying activities.

Title II—Small Business Programs Secs. 321 (p.72)

- Sec. 321 establishes the “Small Business Growth and Domestic Production investment Facility.” Allows the Small Business Administration to consider bank-owned, non-levered applicants for this facility. Must meet certain eligibility criteria, including be a manufacturing business or located in a small business low-income census tract.

Title III—Appropriations (p. 89)

- Sec. 131 authorizes \$749 billion for PPP and Second Draw Loans. It also rescinds \$100 billion from the previously appropriated funds for PPP in the CARES Act and appropriates \$190 billion for PPP and Second Draw Loans, \$57.7 billion for Recovery Sector Loans, and \$10 billion for the Small Business Growth and Domestic Production Investment Facility.

RESTORING CRITICAL SUPPLY CHAINS AND INTELLECTUAL PROPERTY ACT

Title I—U.S. MADE Act (Manufacturing Availability of Domestic Equipment) (p.2)

- Sec. 102 establishes that any purchases made by the U.S. Department of Health and Human Services for the Strategic National Stockpile must be manufactured domestically and component of equipment must be made in the United States. Covered items that do not exceed \$150,000 are exempted.
- Sec. 104 would allow eligible U.S. manufacturers to receive a 30 percent credit against equipment costs associated with the manufacturing of PPE.

Title II—Safeguarding American Innovation Act (p.20)

- Sec. 203 would establish a Federal Research Security Council at the Office of Management and Budget (OMB) to “standardize and secure the federal grantmaking process across the government.”
- Sec. 204 would criminalize an individual knowingly “preparing, submitting, or falsifying a federal grant application that fails to disclose foreign compensation.
- Sec. 205 would create a new authority for the U.S. Department of State to deny visas based on concerns that an applicant would attempt to access export-controlled technologies.
- Sec. 206 would create new requirements for sponsors (including colleges and universities) of J-1 exchange programs to provide the State Department with information about whether or not participants will have access to export-controlled technologies.
- Sec. 207 would amend Section 117 foreign gift reporting in the Higher Education Act, create a new fine system, and would lower the reporting threshold from \$250,000 to \$50,000.

Title III—CHIPS for American Act (Creating Helpful Incentives to Produce Semiconductors) (p. 62)

- Sec. 301-306 creates new grants and programs at the U.S. Department of Commerce and the Department of Defense to incentivize semiconductor fabrication, assembly, testing, packaging, and advanced research and development facilities in the United States.

Title IV- Critical Materials (p.94)

- Sec. 401-402 creates programs and incentives that strengthen U.S. policy and supply chains regarding critical minerals, as well as efforts to strengthen the critical minerals workforce.