

§ 3386. Omitted

Editorial Notes

CODIFICATION

Section, Pub. L. 89-10, title IX, §9005, formerly title VIII, §812, as added Pub. L. 93-380, title I, §110, Aug. 21, 1974, 88 Stat. 513; renumbered title IX, §1006, Pub. L. 95-561, title VIII, §801 (1), (2), Nov. 1, 1978, 92 Stat. 2284; renumbered title X, §1006, Pub. L. 96-46, §2(a)(1), Aug. 6, 1979, 93 Stat. 340; Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692; renumbered §8005, Pub. L. 100-297, title I, §1002(a), Apr. 28, 1988, 102 Stat. 293; renumbered title IX, §9005, Pub. L. 103-227, title X, §1032(1), (2), Mar. 31, 1994, 108 Stat. 270, which related to open meetings of educational agencies, was omitted in the general amendment of the Elementary and Secondary Education Act of 1965, Pub. L. 89-10, by Pub. L. 103-382, title I, §101, Oct. 20, 1994, 108 Stat. 3519.

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SUBCHAPTER I—GENERAL PROVISIONS

§ 3401. Congressional findings

The Congress finds that—

(1) education is fundamental to the development of individual citizens and the progress of the Nation;

(2) there is a continuing need to ensure equal access for all Americans to educational opportunities of a high quality, and such educational opportunities should not be denied because of race, creed, color, national origin, or sex;

(3) parents have the primary responsibility for the education of their children, and States, localities, and private institutions have the primary responsibility for supporting that parental role;

(4) in our Federal system, the primary public responsibility for education is reserved respectively to the States and the local school systems and other instrumentalities of the States;

(5) the American people benefit from a diversity of educational settings, including public and private schools, libraries, museums and other institutions, the workplace, the community, and the home;

(6) the importance of education is increasing as new technologies and alternative approaches to traditional education are consid-

ered, as society becomes more complex, and as equal opportunities in education and employment are promoted;

(7) there is a need for improvement in the management and coordination of Federal education programs to support more effectively State, local, and private institutions, students, and parents in carrying out their educational responsibilities;

(8) the dispersion of education programs across a large number of Federal agencies has led to fragmented, duplicative, and often inconsistent Federal policies relating to education;

(9) Presidential and public consideration of issues relating to Federal education programs is hindered by the present organizational position of education programs in the executive branch of the Government; and

(10) there is no single, full-time, Federal education official directly accountable to the President, the Congress, and the people.

(Pub. L. 96–88, title I, §101, Oct. 17, 1979, 93 Stat. 669.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 96–88, title VI, §601, Oct. 17, 1979, 93 Stat. 696, provided that:

“(a) The provisions of this Act [see Short Title note below] shall take effect one hundred and eighty days after the first Secretary takes office, or on any earlier date on or after October 1, 1979, as the President may prescribe and publish in the Federal Register [prescribed as May 4, 1980, by Ex. Ord. No. 12212, formerly set out below], except that at any time on or after October 1, 1979—

“(1) any of the officers provided for in title II of this Act [subchapter II of this chapter] may be nominated and appointed, as provided in such title; and

“(2) the Secretary may promulgate regulations pursuant to section 505(b)(2) of this Act [section 3505(b)(2) of this title].

“(b) Funds available to any department or agency (or any official or component thereof), the functions or offices of which are transferred to the Secretary or the Department by this Act [see Short Title note below], may, with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this title [this section and section 602 of Pub. L. 96–88 set out below] and other transitional and planning expenses associated with the establishment of the Department or transfer of functions or offices thereto until such time as funds for such purposes are otherwise available.”

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–392, title VI, §601, Sept. 25, 1990, 104 Stat. 840, provided that: “This title [enacting section 3423a of this title, amending section 3424 of this title, repealing sections 1131 and 3423 of this title, and enacting provisions set out as a note under section 2403 of this title] may be cited as the ‘Office of Correctional Education Act of 1990’.”

SHORT TITLE

Pub. L. 96–88, §1, Oct. 17, 1979, 93 Stat. 668, provided in part: “This Act [enacting this chapter, amending sections 928, 929, 1102, 2390, 2711, and 3012 of this title, section 19 of Title 3, The President, sections 101, 5312, and 5314 to 5316 of Title 5, Government Organization and Employees, sections 2, 9, and 11 of the Inspector General Act of 1978, set out in the Appendix to Title 5,

section 1004 of Title 21, Food and Drugs, and sections 761b, 794c, 821, 829, 873, 879, 882, 914, and 952 of Title 29, Labor, and enacting provisions set out as notes under this section and section 1102 of this title] may be cited as the ‘Department of Education Organization Act’.”

EMERGENCY ASSISTANCE AND RELIEF TO SCHOOLS; MAINTENANCE OF EFFORT AND EQUITY

Pub. L. 117–2, title II, §§2001–2004, Mar. 11, 2021, 135 Stat. 19–24, provided that:

“SEC. 2001. ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND.

“(a) IN GENERAL.—In addition to amounts otherwise available through the Education Stabilization Fund, there is appropriated to the Department of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$122,774,800,000, to remain available through September 30, 2023, to carry out this section.

“(b) GRANTS.—From funds provided under subsection (a), the Secretary shall—

“(1) use \$800,000,000 for the purposes of identifying homeless children and youth and providing homeless children and youth with—

“(A) wrap-around services in light of the challenges of COVID–19; and

“(B) assistance needed to enable homeless children and youth to attend school and participate fully in school activities; and

“(2) from the remaining amounts, make grants to each State educational agency in accordance with this section.

“(c) ALLOCATIONS TO STATES.—The amount of each grant under subsection (b) shall be allocated by the Secretary to each State in the same proportion as each State received under part A of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311 et seq.] in the most recent fiscal year.

“(d) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—

“(1) IN GENERAL.—Each State shall allocate not less than 90 percent of the grant funds awarded to the State under this section as subgrants to local educational agencies (including charter schools that are local educational agencies) in the State in proportion to the amount of funds such local educational agencies and charter schools that are local educational agencies received under part A of title I of the Elementary and Secondary Education Act of 1965 in the most recent fiscal year.

“(2) AVAILABILITY OF FUNDS.—Each State shall make allocations under paragraph (1) to local educational agencies in an expedited and timely manner and, to the extent practicable, not later than 60 days after the receipt of such funds.

“(e) USES OF FUNDS.—A local educational agency that receives funds under this section—

“(1) shall reserve not less than 20 percent of such funds to address learning loss through the implementation of evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive afterschool programs, or extended school year programs, and ensure that such interventions respond to students’ academic, social, and emotional needs and address the disproportionate impact of the coronavirus on the student subgroups described in section 1111(b)(2)(B)(xi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(B)(xi)), students experiencing homelessness, and children and youth in foster care; and

“(2) shall use the remaining funds for any of the following:

“(A) Any activity authorized by the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.].

“(B) Any activity authorized by the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.].

“(C) Any activity authorized by the Adult Education and Family Literacy Act [two Acts with

that Short Title: 20 U.S.C. 9201 et seq.; 29 U.S.C. 3271 et seq.].

“(D) Any activity authorized by the Carl D. Perkins Career and Technical Education Act of 2006 [20 U.S.C. 2301 et seq.].

“(E) Coordination of preparedness and response efforts of local educational agencies with State, local, Tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.

“(F) Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.

“(G) Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies.

“(H) Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases.

“(I) Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency.

“(J) Planning for, coordinating, and implementing activities during long-term closures, including providing meals to eligible students, providing technology for online learning to all students, providing guidance for carrying out requirements under the Individuals with Disabilities Education Act and ensuring other educational services can continue to be provided consistent with all Federal, State, and local requirements.

“(K) Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the local educational agency that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and children with disabilities, which may include assistive technology or adaptive equipment.

“(L) Providing mental health services and supports, including through the implementation of evidence-based full-service community schools.

“(M) Planning and implementing activities related to summer learning and supplemental after-school programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, children with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

“(N) Addressing learning loss among students, including low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, of the local educational agency, including by—

“(i) administering and using high-quality assessments that are valid and reliable, to accurately assess students’ academic progress and assist educators in meeting students’ academic needs, including through differentiating instruction;

“(ii) implementing evidence-based activities to meet the comprehensive needs of students;

“(iii) providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment; and

“(iv) tracking student attendance and improving student engagement in distance education.

“(O) School facility repairs and improvements to enable operation of schools to reduce risk of virus transmission and exposure to environmental health hazards, and to support student health needs.

“(P) Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the in-

door air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement.

“(Q) Developing strategies and implementing public health protocols including, to the greatest extent practicable, policies in line with guidance from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff.

“(R) Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency.

“(f) STATE FUNDING.—With funds not otherwise allocated under subsection (d), a State—

“(1) shall reserve not less than 5 percent of the total amount of grant funds awarded to the State under this section to carry out, directly or through grants or contracts, activities to address learning loss by supporting the implementation of evidence-based interventions, such as summer learning or summer enrichment, extended day, comprehensive after-school programs, or extended school year programs, and ensure that such interventions respond to students’ academic, social, and emotional needs and address the disproportionate impact of the coronavirus on the student subgroups described in section 1111(b)(2)(B)(xi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(B)(xi)), students experiencing homelessness, and children and youth in foster care, including by providing additional support to local educational agencies to fully address such impacts;

“(2) shall reserve not less than 1 percent of the total amount of grant funds awarded to the State under this section to carry out, directly or through grants or contracts, the implementation of evidence-based summer enrichment programs, and ensure such programs respond to students’ academic, social, and emotional needs and address the disproportionate impact of the coronavirus on the student populations described in section 1111(b)(2)(B)(xi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(B)(xi)), students experiencing homelessness, and children and youth in foster care;

“(3) shall reserve not less than 1 percent of the total amount of grant funds awarded to the State under this section to carry out, directly or through grants or contracts, the implementation of evidence-based comprehensive afterschool programs, and ensure such programs respond to students’ academic, social, and emotional needs and address the disproportionate impact of the coronavirus on the student populations described in section 1111(b)(2)(B)(xi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(B)(xi)), students experiencing homelessness, and children and youth in foster care; and

“(4) may reserve not more than one-half of 1 percent of the total amount of grant funds awarded to the State under this section for administrative costs and the remainder for emergency needs as determined by the State educational agency to address issues responding to coronavirus, which may be addressed through the use of grants or contracts.

“(g) REALLOCATION.—A State shall return to the Secretary any funds received under this section that the State does not award within 1 year of receiving such funds and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (c).

“(h) DEFINITIONS.—In this section—

“(1) the terms ‘child’, ‘children with disabilities’, ‘distance education’, ‘elementary school’, ‘English learner’, ‘evidence-based’, ‘secondary school’, ‘local educational agency’, ‘parent’, ‘Secretary’, ‘State educational agency’, and ‘technology’ have the meanings given those terms in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801);

“(2) the term ‘full-service community school’ has the meaning given that term in section 4622(2) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7272(2)); and

“(3) the term ‘State’ means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

“(1) SAFE RETURN TO IN-PERSON INSTRUCTION.—

“(1) IN GENERAL.—A local educational agency receiving funds under this section shall develop and make publicly available on the local educational agency’s website, not later than 30 days after receiving the allocation of funds described in paragraph (d)(1), a plan for the safe return to in-person instruction and continuity of services.

“(2) COMMENT PERIOD.—Before making the plan described in paragraph (1) publicly available, the local educational agency shall seek public comment on the plan and take such comments into account in the development of the plan.

“(3) PREVIOUS PLANS.—If a local educational agency has developed a plan for the safe return to in-person instruction before the date of enactment of this Act [Mar. 11, 2021] that meets the requirements described in paragraphs (1) and (2), such plan shall be deemed to satisfy the requirements under this subsection.

“SEC. 2002. EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS.

“(a) IN GENERAL.—In addition to amounts otherwise available through the Emergency Assistance to Non-Public Schools Program, there is appropriated to the Department of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$2,750,000,000, to remain available through September 30, 2023, for making allocations to Governors under the Emergency Assistance to Non-Public Schools Program to provide services or assistance to non-public schools that enroll a significant percentage of low-income students and are most impacted by the qualifying emergency.

“(b) LIMITATIONS.—Funds provided under subsection (a) shall not be used to provide reimbursements to any non-public school.

“SEC. 2003. HIGHER EDUCATION EMERGENCY RELIEF FUND.

“In addition to amounts otherwise available, there is appropriated to the Department of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$39,584,570,000, to remain available through September 30, 2023, for making allocations to institutions of higher education in accordance with the same terms and conditions of section 314 of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (division M of Public Law 116-260) [set out in a note below], except that—

“(1) subsection (a)(1) of such section 314 shall be applied by substituting ‘91 percent’ for ‘89 percent’;

“(2) subsection (a)(2) of such section 314 shall be applied—

“(A) in the matter preceding subparagraph (A), by substituting ‘under the heading ‘Higher Education’ in the Department of Education Appropriations Act, 2020 [title III of div. A of Pub. L. 116-94, 133 Stat. 2593]’ for ‘in the Further Consolidated Appropriations Act, 2020 (Public Law 116-94)’; and

“(B) in subparagraph (B), by substituting ‘under the heading ‘Higher Education’ in the Department of Education Appropriations Act, 2020’ for ‘in the Further Consolidated Appropriations Act, 2020 (Public Law 116-94)’;

“(3) an institution that receives an allocation apportioned in accordance with clause (iii) of subsection (a)(2)(A) of such section 314 that has a total endowment size of less than \$1,000,000 (including an institution that does not have an endowment) shall be treated by the Secretary as having a total endowment size of \$1,000,000 for the purposes of such clause (iii);

“(4) subsection (a)(4) of such section 314 shall be applied by substituting ‘1 percent’ for ‘3 percent’;

“(5) except as provided in paragraphs (7) and (9) of subsection (d) of such section 314, an institution shall use a portion of funds received under this section to—

“(A) implement evidence-based practices to monitor and suppress coronavirus in accordance with public health guidelines; and

“(B) conduct direct outreach to financial aid applicants about the opportunity to receive a financial aid adjustment due to the recent unemployment of a family member or independent student, or other circumstances, described in section 479A of the Higher Education Act of 1965 (20 U.S.C. 1087tt);

“(6) the following shall not apply to funds provided or received in accordance with this section—

“(A) subsection (b) of such section 314;

“(B) paragraph (2) of subsection (c) of such section 314;

“(C) paragraphs (1), (2), (4), (5), (6), and (8) of subsection (d) of such section 314;

“(D) subsections (e) and (f) of such section 314; and

“(E) section 316 of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (division M of Public Law 116-260) [set out in a note below]; and

“(7) an institution that receives an allocation under this section apportioned in accordance with subparagraphs (A) through (D) of subsection (a)(1) of such section 314 shall use not less than 50 percent of such allocation to provide emergency financial aid grants to students in accordance with subsection (c)(3) of such section 314.

“SEC. 2004. MAINTENANCE OF EFFORT AND MAINTENANCE OF EQUITY.

“(a) STATE MAINTENANCE OF EFFORT.—

“(1) IN GENERAL.—As a condition of receiving funds under section 2001, a State shall maintain support for elementary and secondary education, and for 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 each of fiscal years 2022 and 2023 at least at the proportional levels of such State’s support for elementary and secondary education and for higher education relative to such State’s overall spending, averaged over fiscal years 2017, 2018, and 2019.

“(2) WAIVER.—For the purpose of relieving fiscal burdens incurred by States in preventing, preparing for, and responding to the coronavirus, the Secretary of Education may waive any maintenance of effort requirements associated with the Education Stabilization Fund.

“(b) STATE MAINTENANCE OF EQUITY.—

“(1) HIGH-NEED LOCAL EDUCATIONAL AGENCIES.—As a condition of receiving funds under section 2001, a State educational agency shall not, in fiscal year 2022 or 2023, reduce State funding (as calculated on a per-pupil basis) for any high-need local educational agency in the State by an amount that exceeds the overall per-pupil reduction in State funds, if any, across all local educational agencies in such State in such fiscal year.

“(2) HIGHEST POVERTY LOCAL EDUCATIONAL AGENCIES.—Notwithstanding paragraph (1), as a condition of receiving funds under section 2001, a State educational agency shall not, in fiscal year 2022 or 2023, reduce State funding (as calculated on a per-pupil basis) for any highest poverty local educational agency below the level of funding (as calculated on a per-pupil basis) provided to each such local educational agency in fiscal year 2019.

“(c) LOCAL EDUCATIONAL AGENCY MAINTENANCE OF EQUITY FOR HIGH-POVERTY SCHOOLS.—

“(1) IN GENERAL.—As a condition of receiving funds under section 2001, a local educational agency shall not, in fiscal year 2022 or 2023—

“(A) reduce per-pupil funding (from combined State and local funding) for any high-poverty

school served by such local educational agency by an amount that exceeds—

“(i) the total reduction in local educational agency funding (from combined State and local funding) for all schools served by the local educational agency in such fiscal year (if any); divided by

“(ii) the number of children enrolled in all schools served by the local educational agency in such fiscal year; or

“(B) reduce per-pupil, full-time equivalent staff in any high-poverty school by an amount that exceeds—

“(i) the total reduction in full-time equivalent staff in all schools served by such local educational agency in such fiscal year (if any); divided by

“(ii) the number of children enrolled in all schools served by the local educational agency in such fiscal year.

“(2) EXCEPTION.—Paragraph (1) shall not apply to a local educational agency in fiscal year 2022 or 2023 that meets at least 1 of the following criteria in such fiscal year:

“(A) Such local educational agency has a total enrollment of less than 1,000 students.

“(B) Such local educational agency operates a single school.

“(C) Such local educational agency serves all students within each grade span with a single school.

“(D) Such local educational agency demonstrates an exceptional or uncontrollable circumstance, such as unpredictable changes in student enrollment or a precipitous decline in the financial resources of such agency, as determined by the Secretary of Education.

“(d) DEFINITIONS.—In this section:

“(1) ELEMENTARY EDUCATION; SECONDARY EDUCATION.—The terms ‘elementary education’ and ‘secondary education’ have the meaning given such terms under State law.

“(2) HIGHEST POVERTY LOCAL EDUCATIONAL AGENCY.—The term ‘highest poverty local educational agency’ means a local educational agency that is among the group of local educational agencies in the State that—

“(A) in rank order, have the highest percentages of economically disadvantaged students in the State, on the basis of the most recent satisfactory data available from the Department of Commerce (or, for local educational agencies for which no such data are available, such other data as the Secretary of Education determines are satisfactory); and

“(B) collectively serve not less than 20 percent of the State’s total enrollment of students served by all local educational agencies in the State.

“(3) HIGH-NEED LOCAL EDUCATIONAL AGENCY.—The term ‘high-need local educational agency’ means a local educational agency that is among the group of local educational agencies in the State that—

“(A) in rank order, have the highest percentages of economically disadvantaged students in the State, on the basis of the most recent satisfactory data available from the Department of Commerce (or, for local educational agencies for which no such data are available, such other data as the Secretary of Education determines are satisfactory); and

“(B) collectively serve not less than 50 percent of the State’s total enrollment of students served by all local educational agencies in the State.

“(4) HIGH-POVERTY SCHOOL.—

“(A) IN GENERAL.—The term ‘high-poverty school’ means, with respect to a school served by a local educational agency, a school that is in the highest quartile of schools served by such local educational agency based on the percentage of economically disadvantaged students served, as determined by the State in accordance with subparagraph (B).

“(B) DETERMINATION.—In making the determination under subparagraph (A), a State shall select a

measure of poverty established for the purposes of this paragraph by the Secretary of Education and apply such measure consistently to all schools in the State.

“(5) OVERALL PER-PUPIL REDUCTION IN STATE FUNDS.—The term ‘overall per-pupil reduction in State funds’ means, with respect to a fiscal year—

“(A) the amount of any reduction in the total amount of State funds provided to all local educational agencies in the State in such fiscal year compared to the total amount of such funds provided to all local educational agencies in the State in the previous fiscal year; divided by

“(B) the aggregate number of children enrolled in all schools served by all local educational agencies in the State in the fiscal year for which the determination is being made.

“(6) STATE.—The term ‘State’ means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.”

EMERGENCY FUNDING FOR EDUCATION

Pub. L. 116-260, div. M, title III, §§311-317, Dec. 27, 2020, 134 Stat. 1924-1936, provided that:

“EDUCATION STABILIZATION FUND

“SEC. 311. (a) ALLOCATIONS.—From the amount made available under this heading [probably means the heading “EDUCATION STABILIZATION FUND” under the heading “DEPARTMENT OF EDUCATION”, 134 Stat. 1924] in this Act [div. M of Pub. L. 116-260, see Tables for classification] to carry out the Education Stabilization Fund, the Secretary shall first allocate—

“(1) one-half of 1 percent to the outlying areas for supplemental awards to be allocated not more than 30 calendar days from the date of enactment of this Act [Dec. 27, 2020] on the basis of the terms and conditions for funding provided under section 18001(a)(1) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Public Law 116-136) [set out below]; and

“(2) one-half of 1 percent for a supplemental award to be allocated to the Secretary of Interior not more than 30 calendar days from enactment of this Act for programs operated or funded by the Bureau of Indian Education (BIE) under the terms and conditions established for funding provided under section 18001(a)(2) of the CARES Act (Public Law 116-136), for BIE-operated and funded elementary and secondary schools and Tribal Colleges and Universities, except that funding shall be allocated as follows:

“(A) 60 percent for Bureau-funded schools, as defined in 25 U.S.C. 2021, provided that such schools may not be required to submit a spending plan before receipt of funding.

“(B) 40 percent for Tribal Colleges and Universities, which shall be distributed according to the formula in section 316(d)(3) of the Higher Education Act of 1965 (‘HEA’) [20 U.S.C. 1059c(d)(3)].

“(b) RESERVATIONS.—After carrying out subsection (a), the Secretary shall reserve the remaining funds made available as follows:

“(1) 5 percent to carry out section 312 of this title.

“(2) 67 percent to carry out section 313 of this title.

“(3) 28 percent to carry out section 314 of this title.

“GOVERNOR’S EMERGENCY EDUCATION RELIEF FUND

“SEC. 312. (a) PROGRAM AUTHORIZED.—(1) From funds reserved under section 311(b)(1) of this title and not reserved under paragraph (2), the Secretary shall make supplemental Emergency Education Relief grants to the Governor of each State with an approved application under section 18002 of division B of the CARES Act (Public Law 116-136) [set out below]. The Secretary shall award funds under this section to the Governor of each State with an approved application within 30 calendar days of the date of enactment of this Act [Dec. 27, 2020].

“(2) RESERVATION.—From funds made available under section 311(b)(1) of this title, the Secretary shall reserve \$2,750,000,000 of such funds to provide Emergency

Assistance to Non-Public Schools grants, in accordance with subsection (d), to the Governor of each State with an approved application under subsection (d)(2).

“(b) ALLOCATIONS.—The amount of each grant under subsection (a)(1) shall be allocated by the Secretary to each State as follows:

“(1) 60 percent on the basis of their relative population of individuals aged 5 through 24.

“(2) 40 percent on the basis of their relative number of children counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (‘ESEA’) [20 U.S.C. 6333(c)].

“(c) USES OF FUNDS.—Grant funds awarded under subsection (a)(1) may be used to—

“(1) provide emergency support through grants to local educational agencies that the State educational agency deems have been most significantly impacted by coronavirus to support the ability of such local educational agencies to continue to provide educational services to their students and to support the on-going functionality of the local educational agency;

“(2) provide emergency support through grants to institutions of higher education serving students within the State that the Governor determines have been most significantly impacted by coronavirus to support the ability of such institutions to continue to provide educational services and support the on-going functionality of the institution; and

“(3) 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 for authorized activities described in section 313(d)(1) of this title or the HEA [20 U.S.C. 1001 et seq.]; the provision of child care and early childhood education, social and emotional support; and the protection of education-related jobs.

“(d) EMERGENCY ASSISTANCE TO NON-PUBLIC SCHOOLS.—

“(1) PROGRAM AUTHORIZED.—

“(A) IN GENERAL.—With funds reserved under subsection (a)(2), the Secretary shall allot the amount described in subparagraph (B) to the Governor of each State with an approved application under paragraph (2) in order to provide services or assistance to non-public schools under this subsection. The Governor shall designate the State educational agency to administer the program authorized under this subsection.

“(B) AMOUNT OF ALLOTMENT.—An allotment for a State under subparagraph (A) shall be in the amount that bears the same relationship to the total amount of the funds reserved under subsection (a)(2) as the number of children aged 5 through 17 at or below 185 percent of poverty who are enrolled in non-public schools in the State (as determined by the Secretary on the basis of the best available data) bears to the total number of all such children in all States.

“(2) APPLICATIONS FROM STATES.—

“(A) APPLICATION REQUEST AND REVIEW.—The Secretary shall—

“(i) issue a notice inviting applications for funds reserved under subsection (a)(2) not later than 30 days after the date of enactment of this Act [Dec. 27, 2020]; and

“(ii) approve or deny an application not later than 15 days after the receipt of the application.

“(B) ASSURANCE.—The Governor of each State, in consultation with their respective State educational agency, shall include in the application submitted under this paragraph an assurance that the State educational agency will—

“(i) distribute information about the program to non-public schools and make the information and the application easily available;

“(ii) process all applications submitted promptly, in accordance with subparagraph (3)(A)(ii);

“(iii) in providing services or assistance to non-public schools, ensure that services or assistance is provided to any non-public school that—

“(I) is a non-public school described in paragraph (3)(C);

“(II) submits an application that meets the requirements of paragraph (3)(B); and

“(III) requests services or assistance allowable under paragraph (4);

“(iv) to the extent practicable, obligate all funds provided under subsection (a)(2) for services or assistance to non-public schools in the State in an expedited and timely manner; and

“(v) obligate funds to provide services or assistance to non-public schools in the State not later than 6 months after receiving such funds under subsection (a)(2).

“(3) APPLICATIONS FOR SERVICES OR ASSISTANCE.—

“(A) APPLICATION REQUEST AND REVIEW.—A State educational agency receiving funds from the Governor under this subsection shall—

“(i) make the application for services or assistance described in subparagraph (B) available to non-public schools by not later than 30 days after the receipt of such funds; and

“(ii) approve or deny an application not later than 30 days after the receipt of the application.

“(B) APPLICATION REQUIREMENTS.—Each non-public school desiring services or assistance under this subsection shall submit an application to the State educational agency at such time, in such manner, and accompanied by such information as the State educational agency may reasonably require to ensure expedited and timely provision of services or assistance to the non-public school, which shall include—

“(i) the number and percentage of students from low-income families enrolled by such non-public school in the 2019–2020 school year;

“(ii) a description of the emergency services authorized under paragraph (4) that such non-public school requests to be provided by the State educational agency; and

“(iii) whether the non-public school requesting services or assistance under this subsection received a loan guaranteed under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) that was made before the date of enactment of this Act and the amount of any such loan received.

“(C) TARGETING.—A State educational agency receiving funds under this subsection shall prioritize services or assistance to non-public schools that enroll low-income students and are most impacted by the qualifying emergency.

“(4) TYPES OF SERVICES OR ASSISTANCE.—A non-public school receiving services or assistance under this subsection shall use such services or assistance to address educational disruptions resulting from the qualifying emergency for—

“(A) supplies to sanitize, disinfect, and clean school facilities;

“(B) personal protective equipment;

“(C) improving ventilation systems, including windows or portable air purification systems to ensure healthy air in the non-public school;

“(D) training and professional development for staff on sanitation, the use of personal protective equipment, and minimizing the spread of infectious diseases;

“(E) physical barriers to facilitate social distancing;

“(F) other materials, supplies, or equipment to implement public health protocols, including guidelines and recommendations from the Centers for Disease Control and Prevention for the reopening and operation of school facilities to effectively maintain the health and safety of students, educators, and other staff during the qualifying emergency;

“(G) expanding capacity to administer coronavirus testing to effectively monitor and suppress coronavirus, to conduct surveillance and contact tracing activities, and to support other activities related to coronavirus testing for students, teachers, and staff at the non-public school;

“(H) educational technology (including hardware, software, connectivity, assistive technology, and adaptive equipment) to assist students, educators, and other staff with remote or hybrid learning;

“(I) redeveloping instructional plans, including curriculum development, for remote learning, hybrid learning, or to address learning loss;

“(J) leasing of sites or spaces to ensure safe social distancing to implement public health protocols, including guidelines and recommendations from the Centers for Disease Control and Prevention;

“(K) reasonable transportation costs;

“(L) initiating and maintaining education and support services or assistance for remote learning, hybrid learning, or to address learning loss; or

“(M) reimbursement for the expenses of any services or assistance described in this paragraph (except for subparagraphs (C) (except that portable air purification systems shall be an allowable reimbursable expense), (D), (I), and (L)) that the non-public school incurred on or after the date of the qualifying emergency, except that any non-public school that has received a loan guaranteed under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) as of the day prior to the date of enactment of this Act shall not be eligible for reimbursements described in this paragraph for any expenses reimbursed through such loan.

“(5) ADMINISTRATION.—A State educational agency receiving funds under this subsection may reserve not more than the greater of \$200,000 or one-half of 1 percent of such funds to administer the services and assistance provided under this subsection to non-public schools.

“(6) REALLOCATION.—Notwithstanding paragraph (1)(A), each State educational agency receiving funds under this subsection that complies with paragraph (2) but has unobligated funds remaining 6 months after receiving funds under this subsection shall return such remaining unobligated funds to the Governor, to use for any use authorized under subsection (c).

“(7) PUBLIC CONTROL OF FUNDS.—

“(A) IN GENERAL.—The control of funds for the services or assistance provided to a non-public school under this subsection, 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, services, assistance, materials, equipment, and property.

“(B) PROVISION OF SERVICES OR ASSISTANCE.—

“(i) PROVIDER.—The provision of services or assistance to a non-public school under this subsection shall be provided—

“(I) by employees of a public agency; or

“(II) through contract by such public agency with an individual, association, agency, or organization.

“(ii) REQUIREMENT.—In the provision of services or assistance described in clause (i), such employee, individual, association, agency, or organization shall be independent of the non-public school receiving such services or assistance, and such employment and contracts shall be under the control and supervision of such public agency described in subparagraph (A).

“(8) SECULAR, NEUTRAL, AND NON-IDEOLOGICAL.—All services or assistance provided under this subsection, including providing equipment, materials, and any other items, shall be secular, neutral, and non-ideological.

“(9) INTERACTION WITH PAYCHECK PROTECTION PROGRAM.—(A) IN GENERAL.—[sic] In order to be eligible to receive services or assistance under this sub-

section, a non-public school shall submit to the State an assurance, including any documentation required by the Secretary, that such non-public school did not, and will not, apply for and receive a loan under paragraphs (36) or (37) of section 7(a) of the Small Business Act (15 U.S.C. 636(a))[(36),(37)] that is made on or after the date of enactment of this Act.

“(B) ALLOWANCE.—A non-public school that received a loan guaranteed under paragraph (36) of section 7(a) of the Small Business Act (15 U.S.C. 636(a)) that was made before the date of enactment of this Act shall be eligible to receive services or assistance under this subsection.

“(e) RESTRICTIONS.—

“(1) Funds provided under this section shall not be used—

“(A) to provide direct or indirect financial assistance to scholarship granting organizations or related entities for elementary or secondary education; or

“(B) to provide or support vouchers, tuition tax credit programs, education savings accounts, scholarships, scholarship programs, or tuition-assistance programs for elementary or secondary education.

“(2) EXCEPTION.—Notwithstanding paragraph (1), a State may use funds provided under subsection (a)(1) to provide assistance prohibited under paragraph (1) only to students who receive or received such assistance with funds provided under section 18002(a) of division B of the CARES Act [Pub. L. 116-136] (20 U.S.C. 3401 note), for the 2020-2021 school year and only for the same assistance provided such students under such section.

“(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be interpreted to apply any additional restrictions to funds provided in section 18002(a) of division B of the CARES Act (20 U.S.C. 3401 note).

“(f) REALLOCATION.—Each Governor shall return to the Secretary any funds received under paragraph (1) or (2) of subsection (a) that the Governor does not award or obligate not later than 1 year after the date of receipt of such funds, and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (b) for uses authorized under subsection (c).

“ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND

“SEC. 313. (a) GRANTS.—From funds reserved under section 311(b)(2) of this title, the Secretary shall make supplemental elementary and secondary school emergency relief grants to each State educational agency with an approved application under section 18003 of division B of the CARES Act (Public Law 116-136) [set out below]. The Secretary shall award funds under this section to each State educational agency with an approved application within 30 calendar days of the date of enactment of this Act [Dec. 27, 2020].

“(b) ALLOCATIONS TO STATES.—The amount of each grant under subsection (a) shall be allocated by the Secretary to each State in the same proportion as each State received under part A of title I of the ESEA of 1965 [20 U.S.C. 6311 et seq.] in the most recent fiscal year.

“(c) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—Each State shall allocate not less than 90 percent of the grant funds awarded to the State under this section as subgrants to local educational agencies (including charter schools that are local educational agencies) in the State in proportion to the amount of funds such local educational agencies and charter schools that are local educational agencies received under part A of title I of the ESEA of 1965 in the most recent fiscal year.

“(d) USES OF FUNDS.—A local educational agency that receives funds under this section may use the funds for any of the following:

“(1) Any activity authorized by the ESEA of 1965, including the Native Hawaiian Education Act [20 U.S.C. 7511 et seq.] and the Alaska Native Educational Equity, Support, and Assistance Act (20

U.S.C. 6301 et seq.) [20 U.S.C. 7541 et seq.], the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) ('IDEA'), the Adult Education and Family Literacy Act (20 U.S.C. 1400 et seq.) [29 U.S.C. 3271 et seq.], the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) ('the Perkins Act'), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.).

“(2) Coordination of preparedness and response efforts of local educational agencies with State, local, Tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.

“(3) Providing principals and others school leaders with the resources necessary to address the needs of their individual schools.

“(4) Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.

“(5) Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies.

“(6) Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases.

“(7) Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency.

“(8) Planning for, coordinating, and implementing activities during long-term closures, including providing meals to eligible students, providing technology for online learning to all students, providing guidance for carrying out requirements under the IDEA [20 U.S.C. 1400 et seq.] and ensuring other educational services can continue to be provided consistent with all Federal, State, and local requirements.

“(9) Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the local educational agency that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and children with disabilities, which may include assistive technology or adaptive equipment.

“(10) Providing mental health services and supports.

“(11) Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, children with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

“(12) Addressing learning loss among students, including low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care, of the local educational agency, including by—

“(A) Administering and using high-quality assessments that are valid and reliable, to accurately assess students' academic progress and assist educators in meeting students' academic needs, including through differentiating instruction.

“(B) Implementing evidence-based activities to meet the comprehensive needs of students.

“(C) Providing information and assistance to parents and families on how they can effectively support students, including in a distance learning environment.

“(D) Tracking student attendance and improving student engagement in distance education.

“(13) School facility repairs and improvements to enable operation of schools to reduce risk of virus

transmission and exposure to environmental health hazards, and to support student health needs.

“(14) Inspection, testing, maintenance, repair, replacement, and upgrade projects to improve the indoor air quality in school facilities, including mechanical and non-mechanical heating, ventilation, and air conditioning systems, filtering, purification and other air cleaning, fans, control systems, and window and door repair and replacement.

“(15) Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency.

“(e) STATE FUNDING.—With funds not otherwise allocated under subsection (c), a State may reserve not more than one-half of 1 percent for administrative costs and the remainder for emergency needs as determined by the state educational agency to address issues responding to coronavirus, including measuring and addressing learning loss, which may be addressed through the use of grants or contracts.

“(f) REPORT.—A State receiving funds under this section shall submit a report to the Secretary, not later than 6 months after receiving funding provided in this Act, in such manner and with such subsequent frequency as the Secretary may require, that provides a detailed accounting of the use of funds provided under this section, including how the State is using funds to measure and address learning loss among students disproportionately affected by coronavirus and school closures, including low-income students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and children and youth in foster care.

“(g) REALLOCATION.—A State shall return to the Secretary any funds received under this section that the State does not award within 1 year of receiving such funds and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (b).

“HIGHER EDUCATION EMERGENCY RELIEF FUND

“SEC. 314. (a) IN GENERAL.—From funds reserved under section 311(b)(3) of this title the Secretary shall allocate amounts to institutions of higher education with an approved application as follows:

“(1) 89 percent to each institution of higher education as defined in section 101 or section 102(c) of the HEA [20 U.S.C. 1001, 1002(c)] to prevent, prepare for, and respond to coronavirus, by apportioning it—

“(A) 37.5 percent according to the relative share of full-time equivalent enrollment of students who were Federal Pell Grant recipients and who were not exclusively enrolled in distance education courses prior to the qualifying emergency;

“(B) 37.5 percent according to the relative share of the total number of students who were Federal Pell Grant recipients and who were not exclusively enrolled in distance education courses prior to the qualifying emergency;

“(C) 11.5 percent according to the relative share of full-time equivalent enrollment of students who were not Federal Pell Grant recipients and who were not exclusively enrolled in distance education courses prior to the qualifying emergency;

“(D) 11.5 percent according to the relative share of the total number of students who were not Federal Pell Grant recipients and who were not exclusively enrolled in distance education courses prior to the qualifying emergency;

“(E) 1 percent according to the relative share of full-time equivalent enrollment of students who were Federal Pell grant recipients and who were exclusively enrolled in distance education courses prior to the qualifying emergency; and

“(F) 1 percent according to the relative share of the total number of students who were Federal Pell grant recipients and who were exclusively enrolled in distance education courses prior to the qualifying emergency.

“(2) 7.5 percent for additional awards under parts A and B of title III [20 U.S.C. 1057 et seq., 1060 et seq.],

parts A and B of title V [20 U.S.C. 1101 et seq., 1102 et seq.], and subpart 4 of part A of title VII [20 U.S.C. 1136a et seq.] of the HEA to address needs directly related to coronavirus, that shall be in addition to awards made in subsection (a)(1), and allocated by the Secretary proportionally to such programs based on the relative share of funding appropriated to such programs in the Further Consolidated Appropriations Act, 2020 (Public Law 116-94 [see Tables for classification]) and distributed to eligible institutions of higher education, except as otherwise provided in subparagraphs (A) through (C), on the basis of the formula described in subparagraphs (A) through (F) of subsection (a)(1):

“(A) Except as otherwise provided in subparagraph (2)(B), for eligible institutions under part B of title III and subpart 4 of part A of title VII of the HEA, the Secretary shall allot to each eligible institution an amount using the following formula:

“(i) 70 percent according to a ratio equivalent to the number of Pell Grant recipients in attendance at such institution at the end of the school year preceding the beginning of the most recent fiscal year and the total number of Pell Grant recipients at all such institutions;

“(ii) 20 percent according to a ratio equivalent to the total number of students enrolled at such institution at the end of the school year preceding the beginning of that fiscal year and the number of students enrolled at all such institutions; and

“(iii) 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;

“(B) For eligible institutions under section 326 of the HEA [20 U.S.C. 1063b], the Secretary shall allot to each eligible institution an amount in proportion to the award received from funding for such institutions in the Further Consolidated Appropriations Act, 2020 (Public Law 116-94); and

“(C) For eligible institutions under section 316 of the HEA [20 U.S.C. 1059c], the Secretary shall allot funding according to the formula in section 316(d)(3) of the HEA.

“(3) 0.5 percent for part B of title VII of the HEA [20 U.S.C. 1138 et seq.] for institutions of higher education that the Secretary determines have, after allocating other funds available under this section, the greatest unmet needs related to coronavirus, including institutions of higher education with large populations of graduate students and institutions of higher education that did not otherwise receive an allocation under this section. In awarding funds under this paragraph, the Secretary shall publish an application for such funds no later than 60 calendar days of enactment of this Act [Dec. 27, 2020], and shall provide a briefing to the Committees on Appropriations of the House of Representatives and the Senate no later than 7 days prior to publishing such application.

“(4) 3 percent to institutions of higher education as defined in section 102(b) of the HEA [20 U.S.C. 1002(b)] allocated on the basis of the formula described in subparagraphs (A) through (F) of subsection (a)(1).

“(b)(1) DISTRIBUTION.—The funds made available to each institution under subsection (a)(1) shall be distributed by the Secretary using the same systems as the Secretary otherwise distributes funding to institutions under title IV of the HEA [20 U.S.C. 1070 et seq.].

“(2) The Secretary shall allocate amounts to institutions of higher education under this section, to the extent practicable, as follows:

“(A) under subsections (a)(1) and (a)(4) within 30 calendar days of the date of enactment of this Act;

“(B) under subsection (a)(2) within 60 calendar days of the date of enactment of this Act; and

“(C) under subsection (a)(3) within 120 calendar days of enactment of this Act.

“(c) USES OF FUNDS.—An institution of higher education receiving funds under this section may use the funds received to—

“(1) 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);

“(2) carry out student support activities authorized by the HEA that address needs related to coronavirus; or

“(3) 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, such as tuition, food, housing, health care (including mental health care), or child care. In making financial aid grants to students, an institution of higher education shall prioritize grants to students with exceptional need, such as students who receive Pell Grants.

“(d) SPECIAL PROVISIONS.—

“(1) A Historically Black College and University or a Minority Serving Institution may use prior awards provided under titles III, V, and VII of the Higher Education Act [20 U.S.C. 1051 et seq., 1101 et seq., and 1133 et seq.] to prevent, prepare for, and respond to coronavirus.

“(2) An institution of higher education awarded funds under section 18004 of division B of the CARES Act (Public Law 116-136) [set out below] prior to the date of enactment of this Act may use those funds under the terms and conditions of section 314(c) of this title, subject to the requirements in paragraph (5). Amounts repurposed pursuant to this paragraph that were previously designated by the Congress as an emergency requirement pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 [title II of Pub. L. 99-177, see Tables for classification] are designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 901(b)(2)(A)(i)].

“(3) No funds received by an institution of higher education under this section shall be used to fund contractors for the provision of pre-enrollment recruitment activities; marketing or recruitment; endowments; capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship; senior administrator or executive salaries, benefits, bonuses, contracts, incentives; stock buybacks, shareholder dividends, capital distributions, and stock options; or any other cash or other benefit for a senior administrator or executive.

“(4) Any funds that remain available for obligation as of the date of enactment of this Act to carry out section 18004(a)(1) of the CARES Act (Public Law 116-136) [set out below] or under the heading “Safe Schools and Citizenship Education” of such Act shall be used by the Secretary to carry out section 314(a)(1) of this title: *Provided*, That amounts repurposed pursuant to this paragraph that were previously designated by the Congress as an emergency requirement pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 are designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

“(5) Institutions of higher education receiving allocations under section 314(a)(1) of this title shall provide at least the same amount of funding in emergency financial aid grants to students as was required to be provided under sections 18004(a)(1) and (c) of division B of the CARES Act (Public Law 116-136). An institution of higher education that repurposes funds pursuant to paragraph (2) shall ensure that not less than 50 percent of the funds received under section 18004(a)(1) of division B of the CARES Act (Public Law 116-136) are used for financial aid grants to students under either section 18004(c) of division B of the CARES Act or section 314(c)(3) of this title, or a combination of those sections: *Provided*, That amounts repurposed pursuant to this paragraph that were pre-

viously designated by the Congress as an emergency requirement pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 are designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

“(6)(A) An institution of higher education that was required to remit payment to the Internal Revenue Service for the excise tax based on investment income of private colleges and universities under section 4968 of the Internal Revenue Code of 1986 for tax year 2019 shall have its allocation under this section reduced by 50 percent and may only use funds for activities described in paragraph (c)(3), or for sanitation, personal protective equipment, or other expenses associated with the general health and safety of the campus environment related to the qualifying emergency. This paragraph shall not apply to an institution of higher education designated by the Secretary as an eligible institution under section 448 of the HEA [20 U.S.C. 1087–58].

“(B) WAIVER AUTHORITY.—The Secretary may waive the requirements of subparagraph (A) if, upon application, an institution of higher education demonstrates need (including need for additional funding for financial aid grants to students, payroll expenses, or other expenditures) for the total amount of funds such institution is allocated under section 314(a)(1) of this title. The Secretary shall provide and make publicly available a written justification for the denial of any application for a waiver under this subparagraph.

“(7) An institution of higher education as defined in section 102(b) of the HEA [20 U.S.C. 1002(b)] may only use funds received under this section for activities described in subsection (c)(3).

“(8) An institution of higher education with an approved application under section 18004(a) of division B of the CARES Act (Public Law 116–136) prior to the date of enactment of this Act shall not be required to submit a new or revised application to receive funds under this section provided such funds are subject to the terms and conditions of this section.

“(9) An institution of higher education receiving funds under subsections (a)(1)(E) or (F) may only use funds apportioned by such subparagraphs for activities described in subsection (c)(3).

“(e) REPORT.—An institution receiving funds under this section shall submit a report to the Secretary, not later than 6 months after receiving funding provided in this Act [div. M of Pub. L. 116–260, see Tables for classification], in such manner and with such subsequent frequency as the Secretary may require, that provides a detailed accounting of the use of funds provided under this section.

“(f) REALLOCATION.—Any funds allocated to an institution of higher education under this section on the basis of a formula described in subsections (a)(1), (a)(2), and (a)(4) but for which an institution does not apply for funding within 90 days of the publication of the notice inviting applications, shall be reallocated to eligible institutions that had submitted an application by such date in accordance with the formula described in subsection (a)(1).

“CONTINUED PAYMENT TO EMPLOYEES

“SEC. 315. A local educational agency, State, institution of higher education, or other entity that receives funds provided under the heading ‘Education Stabilization Fund’, shall, to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus.

“DEFINITIONS

“SEC. 316. Except as otherwise provided in sections 311 through 316 of this title, as used in such sections—

“(1) the terms ‘elementary education’ and ‘secondary education’ have the meaning given such terms under State law;

“(2) the term ‘institution of higher education’ has the meaning given such term in title I of the HEA [20 U.S.C. 1001 et seq.];

“(3) the term ‘Secretary’ means the Secretary of Education;

“(4) the term ‘State’ means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico;

“(5) the term ‘cost of attendance’ has the meaning given such term in section 472 of the HEA [20 U.S.C. 10877];

“(6) the term ‘Non-public school’ means a non-public elementary and secondary school that—

“(A) is accredited, licensed, or otherwise operates in accordance with State law; and

“(B) was in existence prior to the date of the qualifying emergency for which grants are awarded under this title;

“(7) the term ‘public school’ means a public elementary or secondary school;

“(8) any other term used that is defined in section 8101 of the ESEA of 1965 [20 U.S.C. 7801] shall have the meaning given the term in such section; and

“(9) the term ‘qualifying emergency’ has the meaning given the term in section 3502(a)(4) of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116–136) [20 U.S.C. 1001 note].

“MAINTENANCE OF EFFORT

“SEC. 317. (a) At the time of award of funds to carry out sections 312 or 313 of this title, a State shall provide assurances that such State will maintain support for elementary and secondary education, and for 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 fiscal year 2022 at least at the proportional levels of such State’s support for elementary and secondary education and for higher education relative to such State’s overall spending, averaged over fiscal years 2017, 2018, and 2019.

“(b) The Secretary may waive the requirement in subsection (a) for the purpose of relieving fiscal burdens on States that have experienced a precipitous decline in financial resources.”

[For definition of “coronavirus” as used in sections 311–317 of Pub. L. 116–260, set out above, see section 8 of Pub. L. 116–260, set out as a note under section 5547 of Title 5, Government Organization and Employees.]

Pub. L. 116–136, div. B, title VIII, §§18001–18008, Mar. 27, 2020, 134 Stat. 564–569, provided that:

“EDUCATION STABILIZATION FUND

“SEC. 18001. (a) ALLOCATIONS.—From the amount made available under this heading [probably means the heading “EDUCATION STABILIZATION FUND” under the heading “DEPARTMENT OF EDUCATION”, 134 Stat. 564] in this Act [div. B of Pub. L. 116–136, see Tables for classification] to carry out the Education Stabilization Fund, the Secretary shall first allocate—

“(1) not more than 1/2 of 1 percent to the outlying areas on the basis of their respective needs, as determined by the Secretary, in consultation with the Secretary of the Interior;

“(2) one-half of 1 percent for the Secretary of Interior, in consultation with the Secretary of Education, for programs operated or funded by the Bureau of Indian Education; and

“(3) 1 percent for grants to States with the highest coronavirus burden to support activities under this heading in this Act, for which the Secretary shall issue a notice inviting applications not later than 30 days of enactment of this Act [Mar. 27, 2020] and approve or deny applications not later than 30 days after receipt.

“(b) RESERVATIONS.—After carrying out subsection (a), the Secretary shall reserve the remaining funds made available as follows:

“(1) 9.8 percent to carry out section 18002 of this title.

“(2) 43.9 percent to carry out section 18003 of this title.

“(3) 46.3 percent to carry out section 18004 of this title.

“GOVERNOR’S EMERGENCY EDUCATION RELIEF FUND

“SEC. 18002. (a) GRANTS.—From funds reserved under section 18001(b)(1) of this title, the Secretary shall make Emergency Education Relief grants to the Governor of each State with an approved application. The Secretary shall issue a notice inviting applications not later than 30 days of enactment of this Act [Mar. 27, 2020] and shall approve or deny applications not later than 30 days after receipt.

“(b) ALLOCATIONS.—The amount of each grant under subsection (a) shall be allocated by the Secretary to each State as follows:

“(1) 60 percent on the basis of their relative population of individuals aged 5 through 24.

“(2) 40 percent on the basis of their relative number of children counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6333(c)] (referred to under this heading as ‘ESEA’).

“(c) USES OF FUNDS.—Grant funds awarded under subsection (b) may be used to—

“(1) provide emergency support through grants to local educational agencies that the State educational agency deems have been most significantly impacted by coronavirus to support the ability of such local educational agencies to continue to provide educational services to their students and to support the on-going functionality of the local educational agency;

“(2) provide emergency support through grants to institutions of higher education serving students within the State that the Governor determines have been most significantly impacted by coronavirus to support the ability of such institutions to continue to provide educational services and support the on-going functionality of the institution; and

“(3) 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 for authorized activities described in section 18003(d)(1) of this title or the Higher Education Act [of 1965, 20 U.S.C. 1001 et seq.], the provision of child care and early childhood education, social and emotional support, and the protection of education-related jobs.

“(d) REALLOCATION.—Each Governor shall return to the Secretary any funds received under this section that the Governor does not award within one year of receiving such funds and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (b).

“ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF FUND

“SEC. 18003. (a) GRANTS.—From funds reserved under section 18001(b)(2) of this title, the Secretary shall make elementary and secondary school emergency relief grants to each State educational agency with an approved application. The Secretary shall issue a notice inviting applications not later than 30 days of enactment of this Act [Mar. 27, 2020] and approve or deny applications not later than 30 days after receipt.

“(b) ALLOCATIONS TO STATES.—The amount of each grant under subsection (a) shall be allocated by the Secretary to each State in the same proportion as each State received under part A of title I of the ESEA of 1965 [20 U.S.C. 6311 et seq.] in the most recent fiscal year.

“(c) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES.—Each State shall allocate not less than 90 percent of the grant funds awarded to the State under this section as subgrants to local educational agencies (including charter schools that are local educational agencies) in the State in proportion to the amount of funds such local educational agencies and charter schools that are local educational agencies received under part A of title I of the ESEA of 1965 in the most recent fiscal year.

“(d) USES OF FUNDS.—A local educational agency that receives funds under this title [title VIII of div. B of Pub. L. 116-136, see Tables for classification] may use the funds for any of the following:

“(1) Any activity authorized by the ESEA of 1965, including the Native Hawaiian Education Act [20 U.S.C. 7511 et seq.] and the Alaska Native Educational Equity, Support, and Assistance Act (20 U.S.C. 6301 et seq.) [20 U.S.C. 7541 et seq.], the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) (‘IDEA’), the Adult Education and Family Literacy Act (20 U.S.C. 1400 et seq.) [29 U.S.C. 3271 et seq.], the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 et seq.) (‘the Perkins Act’), or subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.).

“(2) Coordination of preparedness and response efforts of local educational agencies with State, local, Tribal, and territorial public health departments, and other relevant agencies, to improve coordinated responses among such entities to prevent, prepare for, and respond to coronavirus.

“(3) Providing principals and others school leaders with the resources necessary to address the needs of their individual schools.

“(4) Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth, including how outreach and service delivery will meet the needs of each population.

“(5) Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies.

“(6) Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases.

“(7) Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency.

“(8) Planning for and coordinating during long-term closures, including for how to provide meals to eligible students, how to provide technology for online learning to all students, how to provide guidance for carrying out requirements under the Individuals with Disabilities Education Act (20 U.S.C. 1401 [1400] et seq.) and how to ensure other educational services can continue to be provided consistent with all Federal, State, and local requirements.

“(9) Purchasing educational technology (including hardware, software, and connectivity) for students who are served by the local educational agency that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.

“(10) Providing mental health services and supports.

“(11) Planning and implementing activities related to summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

“(12) Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency.

“(e) STATE FUNDING.—With funds not otherwise allocated under subsection (c), a State may reserve not more than 1/2 of 1 percent for administrative costs and the remainder for emergency needs as determined by the state educational agency to address issues responding to coronavirus, which may be addressed through the use of grants or contracts.

“(f) REALLOCATION.—A State shall return to the Secretary any funds received under this section that the

State does not award within 1 year of receiving such funds and the Secretary shall reallocate such funds to the remaining States in accordance with subsection (b).

“HIGHER EDUCATION EMERGENCY RELIEF FUND

“SEC. 18004. (a) IN GENERAL.—The Secretary shall allocate funding under this section as follows:

“(1) 90 percent to each institution of higher education to prevent, prepare for, and respond to coronavirus, by apportioning it—

“(A) 75 percent according to the relative share of full-time equivalent enrollment of Federal Pell Grant recipients who are not exclusively enrolled in distance education courses prior to the coronavirus emergency; and

“(B) 25 percent according to the relative share of full-time equivalent enrollment of students who were not Federal Pell Grant recipients who are not exclusively enrolled in distance education courses prior to the coronavirus emergency.

“(2) 7.5 percent for additional awards under parts A and B of title III [20 U.S.C. 1057 et seq., 1060 et seq.], parts A and B of title V [20 U.S.C. 1101 et seq., 1102 et seq.], and subpart 4 of part A of title VII [20 U.S.C. 1136a et seq.] of the Higher Education Act [of 1965] to address needs directly related to coronavirus, that shall be in addition to awards made in section 18004(a)(1) of this title, and allocated by the Secretary proportionally to such programs based on the relative share of funding appropriated to such programs in the Further Consolidated Appropriations Act, 2020 (Public Law 116-94 [see Tables for classification]) and which may be used to defray expenses (including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, payroll) incurred by institutions of higher education and for grants to students for any component of the student’s cost of attendance (as defined under section 472 of the Higher Education Act [20 U.S.C. 10871]), including food, housing, course materials, technology, health care, and child care.

“(3) 2.5 percent for part B of title VII of the Higher Education Act [20 U.S.C. 1138 et seq.] for institutions of higher education that the Secretary determines have the greatest unmet needs related to coronavirus, which may be used to defray expenses (including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, payroll) incurred by institutions of higher education and for grants to students for any component of the student’s cost of attendance (as defined under section 472 of the Higher Education Act), including food, housing, course materials, technology, health care, and child care.

“(b) DISTRIBUTION.—The funds made available to each institution under subsection (a)(1) shall be distributed by the Secretary using the same systems as the Secretary otherwise distributes funding to each institution under title IV of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq. [20 U.S.C. 1070 et seq.]).

“(c) USES OF FUNDS.—Except as otherwise specified in subsection (a), an institution of higher education receiving funds under this section may use the funds received to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus, so long as such costs do not include payment to contractors for the provision of pre-enrollment recruitment activities; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship. Institutions of higher education shall use no less than 50 percent of such funds to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student’s cost of attendance, such as food, housing, course materials, technology, health care, and child care).

“(d) SPECIAL PROVISIONS.—(1) In awarding grants under section 18004(a)(3) of this title, the Secretary

shall give priority to any institution of higher education that is not otherwise eligible for funding under paragraphs (1) and (2) of section 18004(a) of this title of at least \$500,000 and demonstrates significant unmet needs related to expenses associated with coronavirus.

“(2) A Historically Black College and University or a Minority Serving Institution may use prior awards provided under titles III, V, and VII of the Higher Education Act [20 U.S.C. 1051 et seq., 1101 et seq., and 1133 et seq.] to prevent, prepare for, and respond to coronavirus.

“(e) REPORT.—An institution receiving funds under this section shall submit a report to the Secretary, at such time and in such manner as the Secretary may require, that describes the use of funds provided under this section.

“ASSISTANCE TO NON-PUBLIC SCHOOLS

“SEC. 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 [20 U.S.C. 6320] 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).

“CONTINUED PAYMENT TO EMPLOYEES

“SEC. 18006. A local educational agency, State, institution of higher education, or other entity that receives funds under ‘Education Stabilization Fund’, shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus.

“DEFINITIONS

“SEC. 18007. Except as otherwise provided in sections 18001–18006 of this title, as used in such sections—

“(1) the terms ‘elementary education’ and ‘secondary education’ have the meaning given such terms under State law;

“(2) the term ‘institution of higher education’ has the meaning given such term in title I of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.);

“(3) the term ‘Secretary’ means the Secretary of Education;

“(4) the term ‘State’ means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico;

“(5) the term ‘cost of attendance’ has the meaning given such term in section 472 of the Higher Education Act of 1965 [20 U.S.C. 10871].

“(6) the term ‘Non-public school’ means a non-public elementary and secondary school that (A) is accredited, licensed, or otherwise operates in accordance with State law; and (B) was in existence prior to the date of the qualifying emergency for which grants are awarded under this section;

“(7) the term ‘public school’ means a public elementary or secondary school; and

“(8) any other term used that is defined in section 8101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801) shall have the meaning given the term in such section.

“MAINTENANCE OF EFFORT

“SEC. 18008. (a) A State’s application for funds to carry out sections 18002 or 18003 of this title shall include assurances that the State will maintain support for elementary and secondary education, and State support for 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 fiscal years 2020 and 2021 at least at the levels of such support that is the average of such State's support for elementary and secondary education and for higher education provided in the 3 fiscal years preceding the date of enactment of this Act [Mar. 27, 2020].

“(b) The secretary may waive the requirement in subsection (a) for the purpose of relieving fiscal burdens on States that have experienced a precipitous decline in financial resources.”

[For definition of “coronavirus” as used in sections 18001–18008 of Pub. L. 116–136, set out above, see section 23005 of Pub. L. 116–136, set out as a note under section 162b of Title 2, The Congress.]

INTERIM APPOINTMENTS

Pub. L. 96–88, title VI, §602, Oct. 17, 1979, 93 Stat. 696, provided that:

“(a) In the event that one or more officers required by this Act [see Short Title note above] to be appointed by and with the advice and consent of the Senate shall not have entered upon office on the effective date of this Act [May 4, 1980] and notwithstanding any other provisions of law, the President may designate an officer in the executive branch to act in such office for one hundred and twenty days or until the office is filled as provided in this Act, whichever occurs first.

“(b) Any officer acting in an office in the Department pursuant to the provisions of subsection (a) shall receive compensation at the rate prescribed for such office under this Act.”

Executive Documents

EXECUTIVE ORDER NO. 12212

Ex. Ord. No. 12212, May 2, 1980, 45 F.R. 29557, which established the effective date for the Department of Education Organization Act, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

ENSURING A SAFE RETURN TO IN-PERSON SCHOOL FOR THE NATION'S CHILDREN

Memorandum of President of the United States, Aug. 18, 2021, 86 F.R. 46951, provided:

Memorandum for the Secretary of Education

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. Policy. As the school year starts across the country, a top priority of my Administration is to do everything in our power to ensure a safe return to full-time, in-person school for our Nation's children. With increased access to vaccinations for school staff and students age 12 and older, proven virus prevention strategies, and unprecedented resources from the American Rescue Plan Act of 2021 (Public Law 117–2) [see Tables for classification] (American Rescue Plan) and other Federal pandemic relief funds, opening all schools this fall for full-time, in-person learning is essential. At the same time, the Centers for Disease Control and Prevention (CDC) has made clear that, with the B.1.617.2 (Delta) variant driving an increase in COVID–19 cases nationally, it is critical for schools to protect students against exposure, especially given the number of children who are ineligible to obtain the vaccine at this time. The CDC has provided clear guidance to schools on how to adopt science-based strategies to prevent the spread of COVID–19, and the Department of Education has provided guidance to schools on how to reopen safely while addressing the academic, social, emotional, and mental health needs of our Nation's students.

Many Governors and other State and local officials have risen to the challenge of beginning the new school year safely and responsibly by implementing prevention and mitigation strategies to maximize the health and safety of students, educators, and staff. The Federal Government is supporting these efforts in critical

ways. The American Rescue Plan provides significant support to schools to develop and implement science-based health protocols to prevent the spread of COVID–19. Additionally, the Federal Emergency Management Agency is reimbursing States, including their school districts, at 100 percent Federal cost share to support the safe reopening and operation of school facilities and to effectively maintain the health and safety of students, educators, and staff.

At the same time, however, some State governments have adopted policies and laws that interfere with the ability of schools and districts to keep our children safe during in-person learning. Some of these policies and laws have gone so far as to try to block school officials from adopting safety protocols aligned with recommendations from the CDC to protect students, educators, and staff. And some State officials have even threatened to impose personal financial consequences on school officials who are working tirelessly to put student health and safety first and to comply with their legal obligations to their communities to further the essential goal of a safe, in-person education for all students.

Our priority must be the safety of students, families, educators, and staff in our school communities. Nothing should interfere with this goal.

SEC. 2. Department of Education Role in Ensuring a Safe Return to In-Person School. (a) In furtherance of the policy set out in section 1 of this memorandum, I direct the Secretary of Education to assess all available tools in taking action, as appropriate and consistent with applicable law, to ensure that:

(i) Governors and other officials are taking all appropriate steps to prepare for a safe return to school for our Nation's children, including not standing in the way of local leaders making such preparations; and

(ii) Governors and other officials are giving students the opportunity to participate and remain in safe full-time, in-person learning without compromising their health or the health of their families or communities.

(b) The Secretary of Education's assessment in subsection (a) of this section shall include consideration of whether to take steps toward the initiation of possible enforcement actions under applicable laws.

SEC. 3. General Provisions. (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are authorized and directed to publish this memorandum in the Federal Register.

J.R. BIDEN, JR.

§ 3402. Congressional declaration of purpose

The Congress declares that the establishment of a Department of Education is in the public interest, will promote the general welfare of the United States, will help ensure that education issues receive proper treatment at the Federal level, and will enable the Federal Government to coordinate its education activities more effectively. Therefore, the purposes of this chapter are—

(1) to strengthen the Federal commitment to ensuring access to equal educational opportunity for every individual;