

MEMORANDUM



JOINT BUDGET COMMITTEE

TO Joint Budget Committee
FROM Amanda Bickel, JBC Staff
DATE May 4, 2020 (updated 2:30 pm)
SUBJECT Education Stabilization Fund and Maintenance of Effort for Higher Education Under the Federal CARES Act

Federal H.R. 748, the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) includes provisions for an Education Stabilization Fund that provides additional funding for elementary, secondary, and higher education programs. This memorandum:

- Updates information on the education funds that have been or will be provided to Colorado. The staff memorandum on the CARES Act dated April 3, 2020, included estimates, and the staff Higher Education Budget Balancing packet included information on the vast majority of the funding, but all funding allocations have now been announced.
- Includes preliminary information on the maintenance of effort provisions associated with the new funds, as they pertain to higher education, as these provisions may restrict the JBC's budget balancing options. [Staff will provide a separate memorandum with more detail on the K-12 provisions.]

The CARES Act includes a \$30.75 billion Education Stabilization Fund that is available through September 30, 2021. The key components, apart from small set-asides, are as follows:

Elementary and Secondary Relief Grant: \$13.5 billion for formula grants to states for elementary and secondary education, with the state distributing 90.0 percent of that amount to local education agencies for "coronavirus response activities."

Higher Education Emergency Relief Fund: \$13.95 billion in higher education emergency relief to be provided directly to higher education institutions via a federal formula.

Governor's Emergency Education Relief Fund: Provides \$3.0 billion to the nation's Governors to allocate at their discretion for "emergency support grants to local educational agencies that the State educational agency deems have been most significantly impacted by coronavirus." In addition to grants to K-12, the funds would support grants to higher education institutions.

HIGHER EDUCATION EMERGENCY RELIEF FUND

The funds allocated under the Higher Education Emergency Relief (HEERF) program are provided **directly** to institutions of higher education, including public, nonprofit, and private institutions. Of the total funding, 90.0 percent is allocated by a formula that includes "75 percent according to the relative share of FTE enrollment of Pell grant recipients not exclusively enrolled in distance education courses prior to the emergency; and 25 percent according to the relative share of FTE enrollment of students who were not federal Pell Grant recipients not exclusively enrolled in distance education". The balance of funds includes 7.5 percent for additional awards to institutions that have high concentrations of minority or needy students, and 2.5 percent "for institutions that the Secretary determines have the greatest unmet needs related to coronavirus", with priority for any institution that is not eligible for funding of at least \$500,000 under the formula distribution.

The law specifies that 50 percent of the funds distributed must be used to provide “emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus” (includes housing, food, technology); and the balance of funds are to be used “to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus” (excluding recruitment activities, endowments, or capital outlays associated with athletics, sectarian instruction, or religious worship). Guidance issued by the Department of Education on the use of the funds is fairly restrictive, e.g., reimbursements to students for room and board may be paid from the institutional share of funds but not the emergency financial aid grants to students portion.

The Department of Education released the portion of the funds for emergency financial aid grants for students pursuant to the PELL/student FTE formula (\$6.3 billion) on April 9. These funds were required to go to students eligible for Title IV aid (federal need-based financial aid based on the federal Free Application for Federal Student Aid).¹ It released the remaining PELL/FTE \$6.3 billion of formula allocations on April 21. The final allocations were announced at the end of April.

The table below shows the formula allocations to Colorado **public** institutions of higher education. This includes:

- The primary formula allocations based on PELL and FTE enrollment.
- Additional allocations for minority-serving institutions; and
- Special allocations for entities that received less than \$500,000 from the original formula allocation to round them up to \$500,000.

Institutions have been required to distribute 50.0 percent of these funds to students for emergency financial aid grants for the funds received under the PELL/FTE formula. Staff believes the same requirement will apply to all the funds allocated, based on the language in the law.

CARES ACT HIGHER EDUCATION ALLOCATIONS TO PUBLIC INSTITUTIONS IN COLORADO (50.0 PERCENT FOR STUDENT AWARDS AND 50.0 PERCENT FOR INSTITUTIONAL SUPPORT)				
ENTITY	PELL/FTE FORMULA ALLOCATION	ALLOCATION FOR MINORITY-SERVING INSTITUTIONS	ALLOCATION FOR INSTITUTIONS RECEIVING LESS THAN \$500,000 FROM PELL/FTE/OTHER FORMULAS	GRAND TOTAL HIGHER EDUCATION EMERGENCY RELIEF FUNDS
<u>Institutions that are Part of Public Higher Education State Systems</u>				
Colorado State University system institutions	\$21,653,573	\$303,295	\$0	\$21,956,868
University of Colorado system institutions	36,842,136	902,287	0	37,744,423
Colorado Community College System institutions	35,143,493	1,918,750	164,149	37,226,392
<u>Independent State Institutions with 4-year Comprehensive Focus</u>				

¹ In general, this support can be provided to students for whom the cost of attendance at an institution exceeds their expected family contribution. The majority of resident students at Colorado public institutions could qualify for such aid, but staff does not yet have information on how the institutions have chosen to distribute the funds.

CARES ACT HIGHER EDUCATION ALLOCATIONS TO PUBLIC INSTITUTIONS IN COLORADO (50.0 PERCENT FOR STUDENT AWARDS AND 50.0 PERCENT FOR INSTITUTIONAL SUPPORT)				
ENTITY	PELL/FTE FORMULA ALLOCATION	ALLOCATION FOR MINORITY-SERVING INSTITUTIONS	ALLOCATION FOR INSTITUTIONS RECEIVING LESS THAN \$500,000 FROM PELL/FTE/OTHER FORMULAS	GRAND TOTAL HIGHER EDUCATION EMERGENCY RELIEF FUNDS
Adams State U.	1,568,914	115,073	0	1,683,987
CO Mesa U.	7,068,379	0	0	7,068,379
Metro State U. of Denver	14,390,083	1,056,200	0	15,446,283
Fort Lewis College	3,038,637	348,426	0	3,387,063
Western CO U.	1,353,339	0	0	1,353,339
<u>Independent State Research Institutions</u>				
Colorado School of Mines	3,445,115	0	0	3,445,115
University of Northern Colorado	7,650,214	0	0	7,650,214
<u>Local District Colleges</u>				
Colorado Mountain College	1,694,667	85,526	0	1,780,193
Aims Community College	2,541,187	0	0	2,541,187
Area Technical Colleges	2,797,616	0	371,026	3,168,642
Grand Total - Public Institutions (50% for Student Awards/50% institutional support)	\$139,187,353	\$4,729,557	\$535,175	\$144,452,085

Analysis provided by the National Conference of State Legislatures indicates that an additional **\$28.8 million has been awarded to private nonprofit and for-profit higher education institutions in Colorado under the primary formula allocations**. Recipients range from the University of Denver to small acupuncture and beauty colleges.

The HEERF funding structure and amount differs substantially from the American Recovery and Reinvestment Act (ARRA). ARRA funding for higher education was provided through the states, rather than directly to institutions. Between FY 2008-09 and FY 2010-11, Colorado used \$564.3 million of ARRA funds to support public higher education institutions. None of the ARRA funds were required to be allocated as direct grants to students, so far as staff is aware.

GOVERNOR'S EMERGENCY EDUCATION RELIEF FUND

The federal allocation for Colorado for the Governor's Emergency Education Relief Fund, identified on the federal Department of Education website, is **\$44,004,996**. To receive these funds, the State must make various assurances, including related to the Maintenance of Effort requirements.

As of April 29, the federal government had released the funds to four states; staff assumes Colorado will receive its funds soon, assuming the Governor agrees to the various certifications.

As specified in the CARES Act, these funds may be used as follows:

- Emergency support grants to local education agencies that the "State educational agency deems have been most significantly affected by coronavirus to support the ability of such institutions to continue to provide educational services and support the ongoing functionality of the local educational agency"
- Emergency support through grants to higher education institutions 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 ongoing functionality of the institution"
- Provide support to any other institutions of higher education, local education agencies, or education related entity within the State that the Governor deems essential for carrying out emergency educational services to students for [specified activities, including services for students with disabilities, career and technical education programs, and services for homeless students, among others]
- Funds must be awarded by the Governor within one year.

CARES ACT EDUCATION MAINTENANCE OF EFFORT PROVISIONS

In order to receive both the Elementary and Secondary Relief Grants and the Governor's Emergency Education Relief Funds, states are required to apply for the funds and provide various certifications and assurances. The majority of higher education funds provided through the CARES Act go directly to higher education institutions and are not therefore subject to a state maintenance of effort. However, higher education institutions may receive a portion of the Governor's Emergency Education Relief Fund, and receipt of these funds **is** tied to a maintenance of effort requirement for state higher education support.

Section 18008: "(a) A state's applications to carry out section 18002 [Governor's Emergency Education Relief Fund] or 18003 [Elementary and Secondary Relief Grants] 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.

(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.”

The exact calculation that will be used for the Maintenance of Effort is currently unclear, as there is still no guidance available. Because the language used in subsection (a) is similar to the language used in the State Fiscal Stabilization Fund under the American Recovery and Reinvestment Act (ARRA) of 2010, ARRA may provide some guidance. Specifically, ARRA conditioned funding on an MOE “for state support for higher education (which shall include State funding to institutions of higher education and shall not include support for capital projects or for research and development or tuition and fees paid by students)”. However, ARRA did not reference a maintenance of effort for financial aid in the legislation and included different and more specific provisions for granting a waiver.

Federal guidance on the ARRA MOE noted that the *definition of “state support” is not specified in the legislation* and indicated that the Department would not define it through regulation in light of the variations in state support for higher education. Instead, it established certain governing principles, e.g., the data must include only state support; it must include the principal funding mechanism through which a State provides assistance (e.g., appropriations), and it may not include support from private donors. That said, there was some flexibility. For example, a State could include data for non-appropriated sources (e.g., tobacco settlement funds or lotteries) but was not necessarily required to do so.

The following table provides an example of how the maintenance of effort components might restrict the options for reducing higher education funding. *Note that the figures will vary if additional fund sources or line items are included or if federal guidance indicates a different calculation should be applied.* For purposes of this estimate, staff has included only College Opportunity Fund student stipends and fee-for-service contract appropriations and the Need Based Grants line item.

HIGHER EDUCATION MAINTENANCE OF EFFORT CALCULATION FOR FY 2019-20 AND FY 2020-21				
UNDER 18008 - ESTIMATE/EXAMPLE CALCULATION				
	AVERAGE FY 2016-17, FY 2017-18, FY 2018-19	FY 2019-20 (CURRENTLY ENACTED)	MAXIMUM REDUCTION ALLOWED	% CHANGE
Support to institutions (governing boards/local district colleges/area technical colleges)	\$711,370,353	\$856,230,905	(\$144,860,552)	(16.9%)
State need-based financial aid (Need Based Grants)	131,679,621	163,314,446	(31,634,825)	(19.4%)
Support for higher education (as defined by CARES Act)	\$843,049,973	\$1,019,545,351	(\$176,495,378)	(17.3%)

Finally, it is possible that none of these restrictions will apply, if the State is granted a waiver by the Secretary of Education under Section 18008 (b) on the grounds that the State “has experienced a precipitous decline in financial resources.” However, this is uncertain until such a waiver is granted.