PENN HILL GROUP

777 6th Street NW
Suite 610
Washington DC 20001
tel (202) 618-3900
fax (202) 478-1804
www.pennhillgroup.com

MEMORANDUM

TO: **Interested Parties**
FROM: **Penn Hill Group**
DATE: **March 9, 2021**
SUBJECT: **Summary of the Senate-passed Budget Reconciliation Bill pursuant to the Fiscal Year 2021 Budget Resolution**

This memorandum provides a summary of the education and related provisions (and select child care and broadband provisions) of the American Rescue Plan Act as passed by the Senate. This legislation was considered pursuant to reconciliation directives included in the Fiscal Year (FY) 2021 budget resolution. The text of the engrossed Senate amendment can be found here.

Education Matters

Elementary and Secondary School Emergency Relief (ESSER) Fund

The bill would provide $122.775 billion for the ESSER fund. $800 million of this amount is reserved for the U.S. Department of Education (ED) to identify and assist homeless children and youth to attend school and receive wrap-around services. The bill does not specify under what structure ED will administer these funds (grants, contracts, etc.).

After this reservation, the remaining funds (nearly $122 billion) are required to be provided in the form of grants to States (to remain available through September 30, 2023). Funds would be allocated from the Federal to State level based on each State's share of Title I funds received in the most recent fiscal year. Subgrants from the States to the local educational agency (LEA) level would be based on each LEA's share (including charter schools that are LEAs) of Title I funds received in the most recent fiscal year. This structure is the same as the ESSER fund for which funds were previously appropriated under the Coronavirus Aid, Relief and Economic Security (CARES) Act and the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA). States are required to make allocations to LEAs not later than 60 days after receiving funds to the extent that timeline is practicable.

Under the bill, at least 90 percent of funds are used by the State to make subgrants to LEAs. From grant funds States are not required to allocate to LEAs, the bill includes several requirements:

- Not less than 5 percent to carry out, directly or through grants and contracts, activities to address learning loss through evidence-based interventions such as summer learning or summer enrichment, extended day, comprehensive after school programs, or extended school year programs. Interventions are required to respond to students' academic, social and emotional needs and address the disproportionate impact of COVID-19 on subgroups of students described in the Elementary and Secondary Education Act (ESEA).

- Not less than 1 percent to carry out, directly or through grants or contracts, the implementation of evidence-based summer enrichment activities. Activities are required

to respond to students' academic, social and emotional needs and address the disproportionate impact of COVID-19 on subgroups of students described in ESEA.
- Not less than 1 percent to carry out, directly or through grants or contracts, the implementation of evidence-based comprehensive afterschool programs. Programs are required to respond to students' academic, social and emotional needs and address the disproportionate impact of COVID-19 on subgroups of students described in ESEA.
- ½ of 1 percent for administrative costs.

LEAs receiving subgrants from the State must reserve not less than 20 percent of their grant amount to address learning loss with a similar focus as the 5 percent allocation described above. Outside of this reservation for learning loss, LEAs have wide discretion on the use of funds, including the authority to fund activities authorized under ESEA, the Individuals with Disabilities Education Act (IDEA), the Adult Education and Family Literacy Act and the Carl D. Perkins Career and Technical Education Act. LEAs receiving ESSER funds would be required to develop and make publicly available a plan for "safe return to in-person institution and continuity of services." LEAs must seek public comment on the plan and previously developed plans that meet the bill's requirements are deemed as meeting the requirements of the bill.

States are required to return funds to the U.S. Department of Education (ED) that are not awarded within 1 year of receiving such funds. Returned funds are reallocated to remaining States.

Below is a numerical picture of the reservation and allocation requirements described above with estimates of how much these requirements aggregate across States and school districts as applicable.

Total ESSER Funding: $122.775 billion
Reservation for Homeless Education: $800 million

Total ESSER Grants to States: $121.975 billion (across all States)
10 percent for State level activities: $12.2 billion (across all States)
- 5 percent for learning loss (SEA level): $6.1 billion (across all States)
- 1 percent for summer enrichment: $1.22 billion (across all States)
- 1 percent for comprehensive afterschool: $1.22 billion (across all States)
- .5% for administration: $610 million (across all States)

90 percent for LEA allocations: $109.8 billion (across all LEAs)
- 20 percent for learning loss (LEA level): $21.96 billion (across all LEAs)

Emergency Assistance to Non-Public Schools
The bill provides $2.75 billion in funding under the Emergency Assistance to Non-Public Schools (EANS) Program first funded under CRRSAA. The House bill did not provide this separate funding authority, but rather applied the concept of equitable participation to the 20 percent LEA reservation pertaining to learning loss. The funding provided under this bill is to be used to provide services or assistance to non-public schools that enroll a significant percentage of low-income students and are most impacted by the COVID-19 pandemic. Funding provided under this bill for EANS may not be used to provide reimbursements to any non-public school.

IDEA Funding
The bill provides slightly more than $3 billion in funding for several authorities under IDEA. Specifically, the bill provides $2.58 billion for the Part B, Grants to States program; $200 million

for the Section 619 preschool program, and $250 million for the Part C Infants and Toddlers program.

Maintenance of Effort and Equity

As a condition of receiving funds under ESSER, a State is required to maintain support of elementary and secondary education and higher education in FY 2022 and 2023 at least at the proportionate levels of such support by the State relative to overall spending, averaged over FY 2017 through 2019. For the purpose of "relieving fiscal burdens incurred by States in preventing, preparing for, and responding to" COVID-19, the U.S. Department of Education (ED) is permitted to waive this requirement. This requirement matches the similar requirement in the House bill.

As another condition of receiving funds under ESSER, a State educational agency (SEA) may not (in FY 2022 or 2023) reduce State funding for certain LEAs in the State by an amount that exceeds the overall per-pupil reduction in State funds across all LEAs in the State for the fiscal year. The LEAs to which this requirement applies are those that are among the half of LEAs collectively with the highest percentages of economically disadvantaged students in a State. SEAs are also prohibited from reducing State funding for any LEA that is among the 20 percent of LEAs collectively with the highest percentage of economically disadvantaged students below the level of funding provided to such LEAs in FY 2019.

Lastly, LEAs receiving ESSER funds are prohibited (in FYs 2022 or 2023) from reducing per-pupil funding or per-pupil, full time equivalent (FTE) staff in any high-poverty school in an amount or manner that exceeds the total reduction in LEA funding or FTE staff for all schools served by the LEA divided by the number of children enrolled in all schools served by the LEA. A high-poverty school is considered as such if it is among the top 25 percent of schools based on the percentage of economically disadvantaged students in the LEA. LEAs are not required to adhere to these school funding or FTE reduction provisions if the LEA:

- has less than 1,000 students;
- operates a single school;
- serves all its students with each grade span with a single school; or
- demonstrates an exceptional or uncontrollable circumstance as determined by ED.

Higher Education Emergency Relief (HEER) Fund

The bill would provide $39.585 billion to institutions of higher education (IHEs) (to remain available through September 30, 2023) in accordance with the same terms and conditions that apply to the HEER fund included in CRRSAA, except that:

- 91 percent of funds would be allocated to public and private nonprofit IHEs under the same formula used for HEER under CRRSAA (as opposed to 89 percent under the HEER fund included in CRRSAA).
- 1 percent of funds would be allocated to for-profit IHEs under the same formula used to apportion funds to such IHEs used for HEER under CRRSAA (as opposed to 3 percent under the HEER fund included in CRRSAA).
- IHEs receiving funds under the 91 percent portion (public and nonprofit IHEs) shall use not less than 50 percent of such funds to provide emergency financial aid grants to students.
- IHEs receiving funds under the 1 percent portion (for-profit IHEs) shall use 100 percent of such funds to provide emergency financial aid grants to students.

- Public and private nonprofit IHEs receiving funds shall use a portion to implement evidence-based practices to monitor and suppress COVID-19 and conduct direct outreach to financial aid applicants about the opportunity to receive a financial aid adjustment due to recent unemployment.
- Public and private nonprofit IHEs which receive a portion of an allocation based on Pell recipients who were enrolled exclusively in distance education must use 100 percent of that portion for emergency financial aid grants to students.
- IHEs which were required to pay an excise tax based on investment income are not subject to restrictions contained in the HEER fund included in CRRSAA (i.e. they would receive full allocations under this authority and not be restricted to solely emergency financial aid grants in using such funds).

The provisions under CRRSAA directing 7.5 percent of HEER funds to Minority-serving Institutions (MSIs) (including Historically Black Colleges and Universities and Hispanic-serving Institutions) and the ½ of 1 percent for IHEs with the greatest unmet needs continue to apply to funds provided under the bill.

Funding to Outlying Areas and other Entities and for Certain Activities
The bill provides the following funding totals to respond to COVID-19:

- $850 million to the Outlying Areas.
- $19.25 million to Gallaudet University (and its Kendal Elementary and Model Secondary Schools for the Deaf) and $19.25 million for the National Technical Institute for the Deaf.
- $91.13 million for Student Aid Administration (which among other activities would be used for direct outreach to students and borrowers about financial aid economic impact payments, means tested benefits and tax benefits).
- $35 million for Howard University.
- $100 million for the Institute of Education Sciences to carry out research related to learning loss and to disseminate the findings of such research.
- $15 million for Program Administration at ED.
- $5 million for the ED Inspector General.
- $135 million for the National Endowment for the Arts.
- $135 million for the National Endowment of the Humanities.
- $200 million for the Institute of Museum and Library Services to carry out the Library Services and Technology Act.
- $175 million for the Corporation for Public Broadcasting.

90/10 Rule pertaining to For-Profit IHEs
The bill would modify the way in which non-ED Federal funds are factored into a for-profit IHE's 90/10 calculation. Specifically, the bill would include all Federal funds that are "disbursed or delivered to or on behalf of a student to be used to attend such institution" as counting on the 90 side of the calculation (vs. Federal funds which are not provided through ED's Federal student aid programs presently counting on the 10 percent side of the calculation). The bill also requires this provision to be subject to Higher Education Act master calendar and negotiated rulemaking requirements with negotiated rulemaking not commencing before October 1, 2021. Lastly the bill would apply the new 90/10 calculations to IHE fiscal years beginning on or after January 1, 2023.

<u>Human Service and Community Supports Matters</u>

The bill provides the following funding amounts:

- $14.99 billion for the Child Care Development Block Grant (CCDBG), with payments required to be obligated in FY 2021 or the succeeding two fiscal years and funds authorized to be used to provide childcare assistance to health care sector employees, emergency responders, sanitation workers and other essential workers. Funding provided by the bill for CCDBG must be used to supplement and not supplant Federal, State and local funds expended to provide childcare services.
- $23.975 billion for childcare stabilization grants to assist providers in defraying the costs of providing childcare during the COVID-19 pandemic and paying full compensation to employees of the provider.
- $1 billion for Head Start programs.
- $350 million for programs under the Child Abuse Prevention and Treatment Act, with funds not subject to the State match requirement.
- $1 billion for the Corporation for National Community Service and the National Service Trust to support an increase in AmeriCorps volunteers.

<u>Other Related Provisions</u>

Eliminating Taxation on Portions of Education Loans that are Discharged

The bill would also, starting after December 31, 2020 through January 1, 2027, not count any amount discharged from a loan made for postsecondary education expenses as income and therefore be taxable. The provision covers loans for postsecondary educational expenses, including Federal student loans and certain private education loans.

Expansion of the Child Tax Credit

The bill would increase the size of the child tax credit to $3,600 for each child up to the age of 6 and $3,000 for children aged 6-17 (current maximum is $2,000 per child under the age of 17). Under the bill, the phase out of this credit begins at incomes of $75,000 for individual filers and $150,000 for joint filers.

The bill language would also make the credit “advanceable,” meaning that, instead of waiting to receive a credit or refund when an individual files their tax returns, taxpayers would receive a “periodic” amount (each periodic installment would be the same amount) that over the course of the year would equal the aggregate amount the taxpayer would be eligible for on a yearly basis.

Expansion of the Dependent and Child Care Credit

Under current law, taxpayers may receive a credit for payment of child care costs for children under the age of 13. The credit is equal to 20 to 35 percent of up to $3,000 in child care costs (capped at $6,000 for families with two or more children), with the percentage based on family income. The bill would, for 2021, make the credit refundable, increase the amount of child care expenses eligible for the credit to $8,000 ($16,000 for multiple children), increase the maximum percentage of expenses that may be credited to 50 percent, and increase the income level at which a reduction of the credit percentage begins to $125,000. While the credit may currently be taken by higher-income tax filers, in 2021 it would not be available to those with incomes above $500,000.

Expansion of the Employer Dependent Care Assistance Exclusion

Currently, employees may exclude from their taxable income up to $5,000 that is provided by an employer, through a flexible spending account, for child care for children under the age of 13. The bill would increase the maximum exclusion to $10,500 for 2021.

Support for Emergency Educational Connections and Devices

The bill would establish an “Emergency Connectivity Fund,” funded at $7.2 billion, that would support schools and libraries in providing advanced telecommunications and information services, connected devices and other eligible equipment to students, teachers and library patrons for internet use at home or at other locations outside of the school or library. The bill language defines a “connected device” as including laptop computers, tablets and other end-user devices capable of connecting to the internet and defines “eligible equipment” as including Wi-Fi hotspots, modems and routers, in addition to connected devices.

The Federal government, through the Federal Communications Commission (FCC), would pay for 100 percent of the costs of eligible equipment and services, subject to any caps based on what the FCC determines is reasonable. The funding would be available “during a COVID-19 emergency period,” which is defined as beginning on January 27, 2020, the day on which the U.S. Department of Health and Human Services (HHS) determined that a COVID-19 public health emergency first existed, and ending on the first June 30 that occurs one year after HHS determines that the emergency no longer exists.

The bill language would give the FCC 60 days, from the date of enactment, to promulgate regulations for the new fund.

Education and Remote Options in Coronavirus Capital Projects Fund
The bill provides $10 billion to States, territories and tribal governments for capital projects pertaining to work, education, health monitoring, including remote options. This may permit this fund to be used for education and remote learning projects, including broadband.

Recovery Rebates to Individuals
The bill provides for payments of up to $1,400 for individuals, $2,800 for couples and an additional $1,400 for dependents. Unlike previous payments in other COVID-19 relief bills, taxpayers will get payments for dependents of any age, including college students or adult parent dependents. Payments will be administered by the IRS and based on taxpayers’ 2019 or 2020 tax returns. The benefit is refundable (so an individual does not need to have to had income to receive the payment) and eligible individuals with an adjusted gross income of $75,000 per year ($150,000 for couples filing jointly) are eligible for the full $1,400. Individuals earning more than $80,000 and couples earning more than $160,000 are ineligible for the payments.

Paycheck Protection Program Updates
The bill makes several changes to the Paycheck Protection Plan (PPP) in relation to nonprofit eligibility for the program. First, the bill would expand eligibility of nonprofits (under a new category termed “additional covered nonprofit entities”) to certain nonprofits that have no more than 300 employees and stay under certain thresholds with respect to lobbying activities and expenditures. In addition, the bill makes these “additional covered nonprofit entities” eligible for a second draw of PPP loans provided they have at least 25 percent revenue loss and do not employ more than 300 employees. Lastly, the bill makes larger 501(c)(3) and veteran organizations eligible for PPP if they employ no more than 500 employees per physical location of the organization.

Unemployment Insurance
The bill would continue additional weekly unemployment insurance (UI) payments at $300 per week through Sept. 6. The bill also would waive taxes on the first $10,200 in UI payments for those who made less than $150,000 in adjusted gross income in 2020.