

Memo: Families First Coronavirus Response Act (FFCRA) Paid Leave Tax Credit

Date: May 5, 2020

Overview

The Families First Coronavirus Response Act (FFCRA) created new paid leave benefits that public universities must provide, offering a significant benefit to employees but also a significant new cost on public institutions. Currently, public universities and all other state entities are unable to claim the paid leave tax credit also created through FFCRA to offset these costs.

Bipartisan efforts are moving in the House to address this issue in a Phase IV coronavirus response, but substantial progress is needed in the Senate and with the White House. Supporters on the Hill should be encouraged to make this a redline issue for a Phase IV bill.

Background on FFCRA Paid Leave Provisions and Corresponding Tax Credit

The FFCRA, signed into law on March 18, 2020, created two new forms of paid leave for workers impacted by the COVID-19 pandemic: 1) ten weeks of paid emergency leave through the Family and Medical Leave Act (FMLA); and 2) two weeks of paid sick leave. The FFCRA covers private employers with fewer than 500 employees and certain public employers, including public universities. The paid leave provisions are temporary, going into effect April 1, 2020 and ending on December 31, 2020.¹

Further, the FFCRA created an employer payroll tax credit to help offset the cost of implementing the paid leave provisions. Under the FFCRA, covered private employers qualify for reimbursement through fully refundable payroll tax credits. The credit is equal to the full amount of the qualified sick leave and family leave wages, plus allocable qualified health plan expenses and the employer's share of Medicare tax, paid out between April 1 and December 31. The credit is allowed against taxes imposed on employers through social security tax on all wages and compensation paid to all employees—according to the IRS, “if the amount of the credit exceeds the employer portion of these federal employment taxes, then the excess is treated as an overpayment and refunded to the employer.”² Under current law, however, public employers are not able to claim the paid leave tax credit.

The exclusion of public employers from the paid leave tax credit has been a top area of concern for public institutions, as well as state and local governments. The paid leave benefits are a significant financial stress on public institutions facing a simultaneous precipitous decline in revenue, massive increase in costs, and cuts from state governments that are already occurring or looming in the future. The estimated cost for these benefits exceeds \$35 million at the University of Florida alone. For the

¹ “COVID-19-Related Tax Credits for Required Paid Leave Provided by Small and Midsize Businesses FAQs,” *Internal Revenue Service*, April 10, 2020, <https://www.irs.gov/newsroom/covid-19-related-tax-credits-for-required-paid-leave-provided-by-small-and-midsize-businesses-faqs>.

² *Ibid.*

University of Wisconsin-Madison, conservative cost estimates for implementation range from \$34 to \$65 million, depending on how many employees use the benefit.³

The paid leave tax credit would provide critical relief.

Congressional Response and Next Steps for Advocacy

Advocacy from APLU and the higher education community on this issue has seen clear results in the House of Representatives.⁴ House Democrats expanded access to the tax credit for all public employers in their Phase III legislation.⁵ Further, as members have moved to consider Phase IV legislation, Representatives TJ Cox (D-CA), Brad Schneider (D-IL), Diana Degette (D-CO), John Katko (R-NY), and Peter King (R-NY) urged House and Senate leadership in an April 13, 2020 letter to make state and local governments, including public universities, eligible for payroll tax credits for emergency paid sick and family leave. Over 70 members of the House of Representatives signed onto the letter, which was endorsed by APLU.⁶

Following up on the Dear Colleague letter, on April 28, 2020, Representative Schneider and 107 additional members of Congress introduced bipartisan legislation (H.R. 6643) addressing the issue.⁷ On April 28, Senators Tina Smith (D-MN) and Dick Durbin (D-IL) also announced they would soon introduce companion legislation in the Senate to expand the tax credit to public sector employers.⁸

Unfortunately, additional roadblocks remain with Senate Republicans, as well as the White House. Senate Republican leadership has been critical of requests from states calling for \$500 billion in a Phase IV response.⁹ These political dynamics make this a particularly challenging issue to address. Additional Republican support is essential. Furthermore, Democrats should be encouraged to make this a redline issue for a Phase IV bill.

Supporters should adamantly insist that the fix be included in the next bill—this could include tying the paid leave tax credit to any future round of fiscal stabilization for states.

³ Financial estimates provided by APLU member institutions.

⁴ See, for example, the following community letter: Exclusion of Public Colleges and Universities from Employer Tax Credits Contained in H.R. 6201, *Higher Education Association Letter Led by NACUBO*, March 19, 2020, <https://www.aplu.org/members/councils/governmental-affairs/CGA-library/exclusion-of-public-colleges-and-universities-from-employer-tax-credits-contained-in-hr-6201/file>.

⁵ *Take Responsibility for Workers and Families Act*, H.R. ___, 116th Congress, March 22, 2020, pg. 892, <https://drive.google.com/file/d/1uXBxukdUDauz1Smlm3i1qS3dbi1N1ov/view>.

⁶ Dear Colleague Letter, U.S. House of Representatives, 116th Congress, April 13, 2020, <https://www.naco.org/sites/default/files/documents/Dear%20Colleague-State%20and%20Local%20Payroll%20Tax%20Credit.pdf>.

⁷ *Supporting state and Local Leaders Act*, H.R. 6643, 116th Congress, April 28, 2020, <https://www.congress.gov/bill/116th-congress/house-bill/6643/>.

⁸ *U.S. Senators Tina Smith, Dick Durbin to Introduce Legislative Fix to Help State and Local Governments Provide Paid Leave During Pandemic*, April 28, 2020, <https://www.smith.senate.gov/us-senators-tina-smith-dick-durbin-introduce-legislative-fix-help-state-and-local-governments>.

⁹ *Governors Renew Bipartisan Request For Fiscal Relief For States*, National Governors Association, April 17, 2020, <https://www.nga.org/news/press-releases/governors-renew-bipartisan-request-for-fiscal-relief-for-states/>.