

American Rescue Plan – Education Provisions

The text of the complete law is posted online here:

<https://www.congress.gov/117/bills/hr1319/BILLS-117hr1319enr.pdf>.

ESSER Funding

**TITLE II—COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS**

Subtitle A—Education Matters

PART 1—DEPARTMENT OF EDUCATION

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 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.

(B) Any activity authorized by the Individuals with Disabilities Education Act.

(C) Any activity authorized by the Adult Education and Family Literacy Act.

(D) Any activity authorized by the Carl D. Perkins Career and Technical Education Act of 2006.

(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 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.

(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 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.

(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 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, 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.

(i) 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 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](#)), 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” 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](#)); 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.

SEC. 2005. OUTLYING AREAS.

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, \$850,000,000, to remain available through September 30, 2023, for the Secretary of Education to allocate awards to the outlying areas on the basis of their respective needs, as determined by the Secretary, to be allocated not more than 30 calendar days after the date of enactment of this Act.

Special Education/ IDEA Funding

SEC. 2014. FUNDING FOR THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

(a) AMOUNTS FOR IDEA.—There is appropriated to the Secretary of Education for fiscal year 2021, out of any money in the Treasury not otherwise appropriated—

(1) \$2,580,000,000 for grants to States under part B of the Individuals with Disabilities Education Act;

(2) \$200,000,000 for preschool grants under section 619 of the Individuals with Disabilities Education Act; and

(3) \$250,000,000 for programs for infants and toddlers with disabilities under part C of the Individuals with Disabilities Education Act.

(b) GENERAL PROVISIONS.—Any amount appropriated under subsection (a) is in addition to other amounts appropriated or made available for the applicable purpose.

SEC. 7402. FUNDING FOR E-RATE SUPPORT FOR EMERGENCY EDUCATIONAL CONNECTIONS AND DEVICES.

(a) REGULATIONS REQUIRED.—Not later than 60 days after the date of the enactment of this Act, the Commission shall promulgate regulations providing for the provision, from amounts made available from the Emergency Connectivity Fund, of support under paragraphs (1)(B) and (2) of section 254(h) of the Communications Act of 1934 ([47 U.S.C. 254\(h\)](#)) to an eligible school or library, for the purchase during a COVID–19 emergency period of eligible equipment or advanced telecommunications and information services (or both), for use by—

(1) in the case of a school, students and staff of the school at locations that include locations other than the school; and

(2) in the case of a library, patrons of the library at locations that include locations other than the library.

(b) SUPPORT AMOUNT.—In providing support under the covered regulations, the Commission shall reimburse 100 percent of the costs associated with the eligible equipment, advanced telecommunications and information services, or eligible equipment and advanced telecommunications and information services, except that any reimbursement of a school or library for the costs associated with any eligible equipment may not exceed an amount that the Commission determines, with respect to the request by the school or library for the reimbursement, is reasonable.

(c) EMERGENCY CONNECTIVITY FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the “Emergency Connectivity Fund”.

(2) APPROPRIATION.—In addition to amounts otherwise available, there is appropriated to the Emergency Connectivity Fund for fiscal year 2021, out of any money in the Treasury not otherwise appropriated—

(A) \$7,171,000,000, to remain available until September 30, 2030, for—

(i) the provision of support under the covered regulations; and

(ii) the Commission to adopt, and the Commission and the Universal Service Administrative Company to administer, the covered regulations; and

(B) \$1,000,000, to remain available until September 30, 2030, for the Inspector General of the Commission to conduct oversight of support provided under the covered regulations.

(3) LIMITATION.—Not more than 2 percent of the amount made available under paragraph (2)(A) may be used for the purposes described in clause (ii) of such paragraph.

(4) RELATIONSHIP TO UNIVERSAL SERVICE CONTRIBUTIONS.—Support provided under the covered regulations shall be provided from amounts made available from the Emergency Connectivity Fund and not from contributions under section 254(d) of the Communications Act of 1934 ([47 U.S.C. 254\(d\)](#)).

(d) DEFINITIONS.—In this section:

(1) ADVANCED TELECOMMUNICATIONS AND INFORMATION SERVICES.—The term “advanced telecommunications and information services” means advanced telecommunications and information services, as such term is used in section 254(h) of the Communications Act of 1934 ([47 U.S.C. 254\(h\)](#)).

(2) COMMISSION.—The term “Commission” means the Federal Communications Commission.

(3) CONNECTED DEVICE.—The term “connected device” means a laptop computer, tablet computer, or similar end-user device that is capable of connecting to advanced telecommunications and information services.

(4) COVERED REGULATIONS.—The term “covered regulations” means the regulations promulgated under subsection (a).

(5) COVID–19 EMERGENCY PERIOD.—The term “COVID–19 emergency period” means a period that—

(A) begins on the date of a determination by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act ([42 U.S.C. 247d](#)) that a public health emergency exists as a result of COVID–19; and

(B) ends on the June 30 that first occurs after the date that is 1 year after the date on which such determination (including any renewal thereof) terminates.

(6) ELIGIBLE EQUIPMENT.—The term “eligible equipment” means the following:

(A) Wi-Fi hotspots.

(B) Modems.

(C) Routers.

(D) Devices that combine a modem and router.

(E) Connected devices.

(7) ELIGIBLE SCHOOL OR LIBRARY.—The term “eligible school or library” means an elementary school, secondary school, or library (including a Tribal elementary school, Tribal secondary school, or Tribal library) eligible for support under paragraphs (1)(B) and (2) of section 254(h) of the Communications Act of 1934 ([47 U.S.C. 254\(h\)](#)).

(8) EMERGENCY CONNECTIVITY FUND.—The term “Emergency Connectivity Fund” means the fund established under subsection (c)(1).

(9) LIBRARY.—The term “library” includes a library consortium.

(10) WI-FI.—The term “Wi-Fi” means a wireless networking protocol based on Institute of Electrical and Electronics Engineers standard 802.11 (or any successor standard).

(11) WI-FI HOTSPOT.—The term “Wi-Fi hotspot” means a device that is capable of—

(A) receiving advanced telecommunications and information services; and

(B) sharing such services with a connected device through the use of Wi-Fi.

SEC. 9641. PAYROLL CREDITS.

[This section is applicable to school districts and other state and local governments.]

(a) IN GENERAL.—[Chapter 21](#) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subchapter:

“Subchapter D—Credits

[“Sec. 3131. Credit for paid sick leave.](#)

[“Sec. 3132. Payroll credit for paid family leave.](#)

[“Sec. 3133. Special rule related to tax on employers.](#)

“SEC. 3131. CREDIT FOR PAID SICK LEAVE.

“(a) IN GENERAL.—In the case of an employer, there shall be allowed as a credit against applicable employment taxes for each calendar quarter an amount equal to 100 percent of the qualified sick leave wages paid by such employer with respect to such calendar quarter.

“(b) LIMITATIONS AND REFUNDABILITY.—

“(1) WAGES TAKEN INTO ACCOUNT.—The amount of qualified sick leave wages taken into account under subsection (a), plus any increases under subsection (e), with respect to any individual shall not exceed \$200 (\$511 in the case of any day any portion of which is paid sick time described in paragraph (1), (2), or (3) of section 5102(a) of the Emergency Paid Sick Leave Act, applied with the modification described in subsection (c)(2)(A)(i)) for any day (or portion thereof) for which the individual is paid qualified sick leave wages.

“(2) OVERALL LIMITATION ON NUMBER OF DAYS TAKEN INTO ACCOUNT.—The aggregate number of days taken into account under paragraph (1) for any calendar quarter shall not exceed the excess (if any) of—

“(A) 10, over

“(B) the aggregate number of days so taken into account during preceding calendar quarters in such calendar year (other than the first quarter of calendar year 2021).

“(3) CREDIT LIMITED TO CERTAIN EMPLOYMENT TAXES.—The credit allowed by subsection (a) with respect to any calendar quarter shall not exceed the applicable employment taxes for such calendar quarter on the wages paid with respect to the employment of all employees of the employer.

“(4) REFUNDABILITY OF EXCESS CREDIT.—

“(A) CREDIT IS REFUNDABLE.—If the amount of the credit under subsection (a) exceeds the limitation of paragraph (3) for any calendar quarter, such excess shall be treated as an overpayment that shall be refunded under sections 6402(a) and 6413(b).

“(B) ADVANCING CREDIT.—In anticipation of the credit, including the refundable portion under subparagraph (A), the credit shall be advanced, according to forms and instructions provided by the Secretary, up to an amount calculated under subsection (a), subject to the limits under paragraph (1) and (2), all calculated through the end of the most recent payroll period in the quarter.

“(c) QUALIFIED SICK LEAVE WAGES.—For purposes of this section—

“(1) IN GENERAL.—The term ‘qualified sick leave wages’ means wages paid by an employer which would be required to be paid by reason of the Emergency Paid Sick Leave Act as if such Act **applied after March 31, 2021.**

“(2) RULES OF APPLICATION.—For purposes of determining whether wages are qualified sick leave wages under paragraph (1)—

“(A) IN GENERAL.—The Emergency Paid Sick Leave Act shall be applied—

“(i) by inserting ‘, the employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, COVID–19 and such employee has been exposed to COVID–19 or the employee’s employer has requested such test or diagnosis, or the employee is obtaining immunization related to COVID–19 or recovering from any injury, disability, illness, or condition related to such immunization’ after ‘medical diagnosis’ in section 5102(a)(3) thereof, and

“(ii) by applying section 5102(b)(1) of such Act separately with respect to each calendar year after 2020 (and, in the case of calendar year 2021, without regard to the first quarter thereof).

“(B) LEAVE MUST MEET REQUIREMENTS.—If an employer fails to comply with any requirement of such Act (determined without regard to section 5109 thereof) with respect to paid sick time (as defined in section 5110 of such Act), amounts paid by such employer with respect to such paid sick time shall not be taken into account as qualified sick leave wages. For purposes of the preceding sentence, an employer which takes an action described in section 5104 of such Act shall be treated as failing to meet a requirement of such Act.