The CARES Act and the latest Guidance from FSA

April 21, 2020
New York State Financial Aid Administrators Association
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Presentation Overview

CARES Act: Critical Resources for Higher Ed

Higher Education Emergency Relief Fund (HEERF)

Higher Education Regulatory Relief

Main Street Lending Program

Paycheck Protection Program

Economic Injury Disaster Loan
CARES Act: Critical Resources for Higher Ed
Critical Resources: Congress

One Hundred Sixteenth Congress of the United States of America

At the Second Session

Begun and held in the City of Washington on Tuesday, the third day of January, one thousand nine hundred and seventy.

In Act

To amend the Federal Education Law. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Short Title.

This Act may be cited as the "Coronavirus Aid, Relief, and Economic Security Act," or "CARES Act.

Section 2. Scope of Title.

The provisions of this Act shall apply to the following:

Title I - Assistance for States, Local Governments, and Indian Tribes

Section 101. Assistance for States, Local Governments, and Indian Tribes

Title II - Assistance for Education

Section 201. Assistance for Education

Title III - Additional Support for State and Local Governments

Section 301. Additional Support for State and Local Governments

Title IV - Assistance for Rural Areas

Section 401. Assistance for Rural Areas

Title V - Assistance for the Health Care Industry

Section 501. Assistance for the Health Care Industry

Title VI - Assistance for the Small Business Community

Section 601. Assistance for the Small Business Community

Title VII - Assistance for文字内容继续...
Critical Resources: Other
Higher Education Emergency Relief Fund
The CARES Act (enacted March 27, 2020) created a $30.75 billion Education Stabilization Fund, about $14 billion of which was allocated to the Higher Education Emergency Relief Fund (HEERF), as follows:

<table>
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<th>Amount</th>
<th>Description</th>
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<td>$12.56 billion</td>
<td>Disbursed directly to institutions to “prevent, prepare for, and respond to” COVID-19.</td>
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<td>About $1 billion</td>
<td>For minority-serving institutions.</td>
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<td>About $350 million</td>
<td>For grants to institutions particularly impacted by coronavirus.</td>
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In allocating the $12.56 billion, the CARES Act directed ED to follow the following formula:

- 75% of what each institution receives is based on its relative share of full time equivalent students who are federal Pell Grant recipients.
- 25% of its relative share of full-time equivalent student who are not federal Pell Grant recipients.
- Students enrolled exclusively in distance education courses are excluded.
Guidelines for Use

At least 50% for student grants

- At least 50% of the funds awarded must be used 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).

Up to 50% to cover institutional costs

- May 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.
Status of Implementation

• On April 9, 2020, ED published its allocation methodology and determinations, accompanied by a letter from the Secretary and instructions for securing the first half of the allocation.

• Institutions are required to sign a Funding Certification and Agreement (FCA) for this first allocation, and to upload the signed document through the grants.gov website.

• Institutions will draw down funds through the agency’s G5 system.
Status of Implementation

• As of April 17, 2020, no institution had reported receiving the first tranche of funds.
  ▪ Many have reported frustration with grants.gov.

• ED has indicated that more guidance is forthcoming regarding the appropriate distribution of student grants.

• ED is working “expeditiously to allocate the remaining funding that is reserved for institutional use,” and “will provide details on how institutions may apply for this institutional funding, as well as for other emergency funding, in the coming days.”
Distributing Emergency Financial Aid Grants
Qualified Expenses

• The CARES Act states that the grants to students are “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).”

• The Secretary acknowledges in her letter that the “only statutory requirement” is that the funds be used to cover such expenses.

CARES Act § 18004; Secretary’s April 9 Letter.
“The CARES Act provides institutions with significant discretion on how to award this emergency assistance to students. This means that each institution may develop its own system and process for determining how to allocate these funds, which may include distributing the funds to all students or only to students who demonstrate significant need.”

Institutions retain “discretion to determine the amount of each individual emergency financial aid grant consistent with all applicable laws including non-discrimination laws.”
Suggestions from ED

• Be mindful of each student’s particular socioeconomic circumstances.
• Prioritize students with the greatest need;
• Consider establishing a maximum funding threshold (recommend maximum Pell grant as a cap ($6,195)).
• Use PJ to adjust EFC to exclude grants.
Certifications & Limitations

- Institutions must certify in the FCA that they will “promptly” make grants “directly” to students for qualified expenses.
- An institution is expressly prohibited from using the funds to “to reimburse itself for any costs or expenses, including but not limited to any costs associated with significant changes to the delivery of instruction due to the coronavirus and/or any refunds or other benefits that [the school] previously issued to students.”
Timing and Documentation

• Institutions must certify that they will “promptly and to the greatest extent practicable” distribute the emergency financial aid grants to students “by one year from the date of this Certification and Agreement.”

• Institutions must also “document” their “efforts to do so” as part of their reporting obligations.
The FCA specifies that schools shall:

1. Report 30 days from the date of the FCA and every 45 days thereafter how grants were distributed to students, the amount of each grant awarded to each student, how the amount of each grant was calculated, and any instructions or directions given to students about the grants.

2. Document “that the school has continued to pay all of its employees and contractors during the period of any disruptions or closures to the greatest extent practicable, explaining in detail all specific actions and decisions related thereto.”

CARES Act §§ 18004 and 18006; Funding and Certification Agreement.
Audit Rights

• Institutions agree that they will “cooperate with any examination of records with respect to [the funds received] by making records and authorized individuals available when requested, whether by (i) the U.S. Department of Education and/or its Inspector General; or (ii) any other federal agency, commission, or department in the lawful exercise of its jurisdiction and authority.”
The FCA also makes clear that failure to comply with the terms of the Agreement, the CARES Act or “any other applicable law” may result in liability under a wide range of federal law:

- The False Claims Act, 31 U.S.C. § 3729, et seq.;
- OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement) in 2 CFR part 180
- 18 USC § 1001, as appropriate; and
- All of the laws and regulations referenced in Attachment A.
Best Practices

- Take your time and document, document, then document again.
- Keep the methodology simple and run advance scenarios.
- Get the money out the door sooner rather than later.
- Don’t connect the distribution formula to institutional expenses or refunds in any way.
- Have students certify need and understanding of qualified expenses.
- Review critical resources daily for updates and further guidance.
Outstanding Issues

“Opting in” to apply grant against outstanding balance

Undocumented and international students

Eligibility of students who withdrew and future starts

Eligibility of strictly online students and non-Title IV students

Applications, student surveys, certifications of need, and receipts

One grant for all, grants by groups, or individual assessment
Higher Education Regulatory Relief
Waivers and Limitations

• The CARES Act temporarily modifies many Title IV requirements to provide relief to schools and borrowers. **However**, it does not give ED broad authority to grant statutory or regulatory waivers to institutions of higher education.
  - Early drafts of the legislation included such language, but it did not make it into the final bill.

• This means, absent further legislation, statutory and regulatory deadlines remain **unchanged**.
• FSA’s April 3 guidance remains the most current and comprehensive on regulatory relief.

• Additional guidance has been promised.

• Also check out NASFAA’s AskRegs page for significant Q&A.
R2T4 Relief

• An institution’s obligations to return Title IV funds, other than assistance received as part of Federal Work Study programs, is waived if a student withdraws during a payment period or period of enrollment due to COVID-19.

  - Institutions must still perform the R2T4 calculations, report the number of withdrawn Title IV recipients, the amount of grant or loan assistance (other than assistance received as a part of a Federal Work Study Program), and the total amount of grant or loan assistance not returned to ED.

CARES Act § 3501 et seq.
R2T4 Relief

- A student’s obligation to return Title IV aid is **waived** if the student withdraws due to COVID-19.
- A student’s obligation to repay loans is **cancelled** if the student withdraws due to COVID-19.
- Institutions may, as a result of COVID-19, provide a student with an approved **leave of absence** that does not require the student to return at the same point in the academic program that the student began the leave of absence if the student returns within the same semester.

CARES Act § 3501 et seq.
Campus-Based Aid

- Federal Supplemental Educational Opportunity Grant (FSEOG) allocations can be used to award additional emergency financial aid to undergraduate or graduate students.
- Institutions can transfer any unexpended Federal Work Study (FWS) allotment to the institution’s FSEOG allotment for use as emergency aid.

CARES Act § 3501 et seq.
Campus-Based Aid

- If a student *cannot* fulfill his or her federal work study obligations because of COVID-19, institutions can continue to make FWS payments for up to one academic year.
  - Students who *can* work are *not* eligible to be paid FWS for any hours they do not actually work.

- The FSEOG and FWS matching requirement for award years 2019-2020 and 2020-2021 *is waived*, except that private for-profit organizations that employ FWS students continue to be required to provide a match in funds.
  - NOTE: the exclusion concerns for-profit organizations employing FWS students, *not* proprietary institutions.
Any semester that a student does not complete due to COVID-19 does not count toward the time limits prescribed for federal subsidized loans and federal Pell Grants.

Institutions may exclude any attempted credits not completed as a result of COVID-19 from the quantitative component of the satisfactory academic progress calculation without requiring an appeal by the student.

For HBCUs, ED may defer capital financing loans and will make principal and interest payments during deferment. ED also may waive reporting requirements for schools participating in the MSI programs.

The Department may waive or modify allowable uses of funds and matching requirements for grants awarded under the Federal TRIO and GEAR-UP programs as a result of the COVID-19 pandemic.

The Department may permit a foreign institution facing an emergency or major disaster to use distance learning for the duration of the emergency or disaster and the following payment period.

CARES Act § 3501 et seq.
Main Street Lending Program
Main Street Overview

• **Federal Reserve** has established Main Street Lending Program to support lending to small and medium-sized businesses that were in good financial standing before COVID-19.

• Will operate through two facilities: the Main Street New Loan Facility (MSNLF) and the Main Street Expanded Loan Facility (MSELF).
Main Street Overview

• Offers up to 4-year loans to borrowers employing up to 10,000 workers or with revenues of less than $2.5 billion. Principal and interest payments will be deferred for one year.

• Borrowers must apply through their banks.

• Banks may originate new Main Street loans or use Main Street loans to increase the size of existing loans to businesses.
  ▪ Banks will retain a 5 percent share, selling the remaining 95 percent to the Main Street facility, which will purchase up to $600 billion of loans.
Main Street Overview

- Borrowers seeking Main Street loans must commit to make **reasonable** efforts to **maintain payroll** and retain workers.

- Borrowers must also follow compensation, stock repurchase, and dividend restrictions that apply to direct loan programs under the CARES Act.

- Recipients that have taken advantage of the PPP may also take out Main Street loans. However, if the PPP provided adequate economic relief, then the recipient should not apply.
Status of Implementation

• Fed issued terms and conditions seeking public comment.

• Comment period closed April 16, 2020, and it is expected details will come later this week.

• This program is expected to be administered on a “first come, first serve” basis. Interested institutions should begin evaluating eligibility and compiling necessary documentation immediately.
Paycheck Protection Program
PPP Overview

• $349 billion for SBA forgivable loans under Section 7(a) of the Small Business Act. Institutions must apply through their banks.

• Institutions (including non-profits) with less than 500 employees, or the applicable size standard for the industry, can apply for a loan through June 30, 2020.
  
  ▪ If an institution is deemed to have an “affiliation” it must aggregate employees across affiliates. An affiliation exists when one entity controls another or when a third party controls both entities.

CARES Act § 1102.
PPP Overview

• PPP loans are capped at the lesser of $10 million and 2.5 times the average monthly payroll costs incurred in the one-year period before the date of the loan.
  - No personal guarantee or collateral is required for the loan. Loan term is 2 years at 1%.

• May be used for payroll costs, costs related to the continuation of group health care benefits, salaries, payments of mortgage interest, rent, utilities and debt obligations incurred before February 15, 2020.

• Generally, part or all of the loan may be forgiven if the borrower maintains its payroll at normal levels with no federal tax consequences.

CARES Act § 1102.
Status of Implementation

- The PPP was administered on a “first come, first serve” basis beginning in late March.
- On April 16, 2020, the SBA website indicated that the “SBA is currently unable to accept new applications for the Paycheck Protection Program based on available appropriations funding.”
- Future legislation may provide additional funding.
Economic Injury Disaster Loan
EIDL Overview

• Allocates $10 billion and expands existing EIDL program. **Institutions must apply through their banks.**

• Proprietary institutions of higher education with not more than 500 employees, subject to SBA affiliation rules, are eligible for EIDL loans.

• Most private non-profit institutions are eligible without regard to their number of employees.
EIDL Overview

- EIDL loans offer up to $2 million to pay fixed debts, payroll, accounts payable and other bills that cannot be paid because of the disaster’s impact.

- Interest rate for EIDL loans is 3.75% for small businesses and 2.75% for nonprofits, and the maximum loan term is 30 years. There are no loan forgiveness provisions for EIDLs.

- Institutions may apply for and receive both an EIDL loan and a PPP loan, but the loans cannot be used for the same purpose.
EIDL Overview

• Eligible institutions also may receive a $10,000 emergency grant cash advance if their EIDL application is related to COVID-19.
  ▪ Emergency grants generally will be available within 3 days of application.
  ▪ Institutions may not be required to repay the cash advance.

• Emergency cash grants can be used for paid leave, maintaining payroll, increased costs due to supply chain disruption, making rent or mortgage payments or repaying obligations that cannot be met due to revenue losses.
The EIDL program was administered on a “first come, first serve” basis beginning in early April.

On April 16, 2020, the SBA website indicated that the “SBA is unable to accept new applications at this time for the Economic Injury Disaster Loan (EIDL)-COVID-19 related assistance program (including EIDL Advances) based on available appropriations funding.”

Future legislation may provide additional funding.
# Higher Ed Webinar Series

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<td>Better Together? Competition, Price Gouging and Other Antitrust Issues Raised by the COVID-19 Pandemic</td>
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<td>The CARES Act for Higher Education: Strategy and Implementation</td>
<td>April 20, 2020</td>
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<td>State and Federal Implementation of Industrial Hemp Laws</td>
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<td>Navigating HR Issues during the COVID-19 Emergency</td>
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<td>Using GDPR to Prepare for CCPA, and Vice-Versa</td>
<td>March 11, 2020</td>
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The CARES Act: More options for higher education

This is a brief overview of provisions of the CARES Act that, while not designed specifically for higher education, are nonetheless relevant to institutions in their roles as businesses and employers, and which may provide opportunities for economic relief. READ MORE

The CARES Act: Summary of provisions impacting higher education institutions and borrowers

In this article, we provide a brief overview of the provisions of the CARES Act that most directly concern institutions of higher education and their borrowers. In some cases, the statutory language contemplates extraordinary waivers, assistance, and accommodations, with very little detail regarding when and how such relief will become...
COVID-19: Is there a silver lining for higher education?

Here at REGucation, we typically stick to legal and policy analysis, exploring the latest machinations from the U.S. Department of Education, the Hill, and the like. And these bodies certainly have been busy over the last two weeks. Indeed, the updates, alerts, and guidance have emanated in staggering volume, and at a rapid pace. We've covered some of this activity, and expect to cover much more before all is said and done. But for this post, we've decided to veer a little out of our lane, and to offer some observations, encouragement, and a little hope.

To be sure, it's difficult to imagine any silver lining associated with the spread of COVID-19 across the United States. This disease is serious business, and it brings with it the direst of consequences. What's more, a positive outcome is particularly difficult to conceive for higher education, which has been hit very hard. Campuses have closed. Students have gone home (or find themselves confined to empty dorms and dining halls). Administrators are struggling to digest the latest government orders and regulatory guidance, and faculty and staff are struggling to adjust to online platforms. All this having been acknowledged, we believe there may be some
ED issues instructions to Higher Ed to obtain CARES Act funds

Earlier this afternoon, the U.S. Department of Education sent a letter to institutional leaders detailing the process for securing the first round of relief funds under the Coronavirus Aid, Relief, and Economic Security ("CARES") Act. The Department has included a breakdown of the funds each institution will receive under the Higher Education Emergency Relief Fund, as well as a Certificate of Agreement that must completed.

Learn More

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