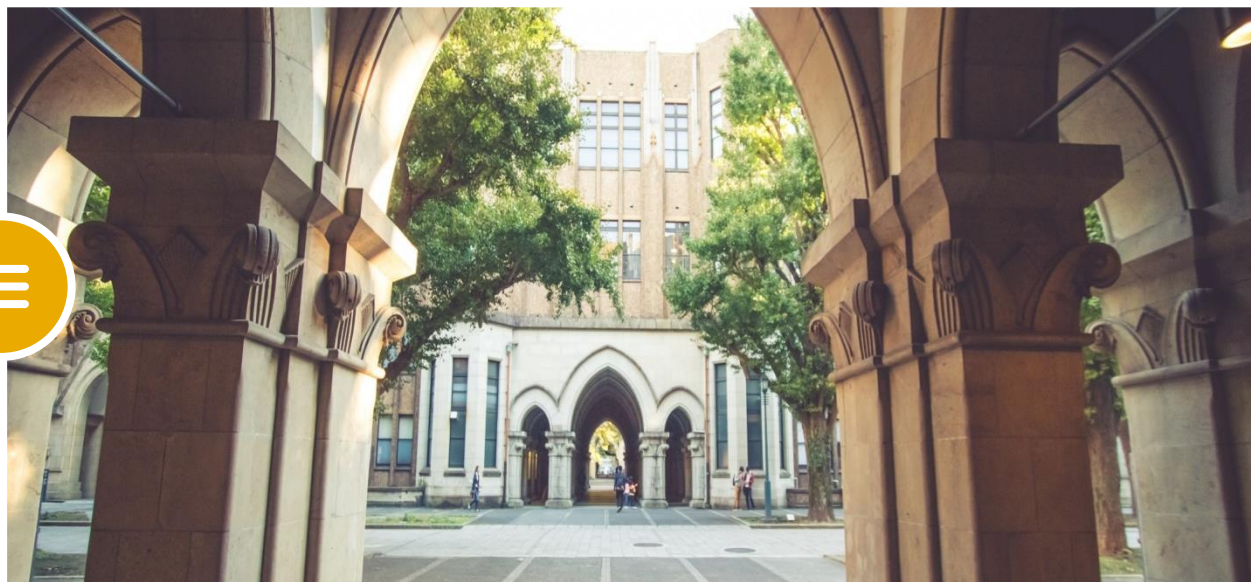


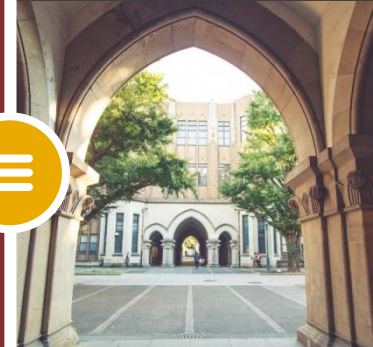
The CARES Act and the latest Guidance from FSA



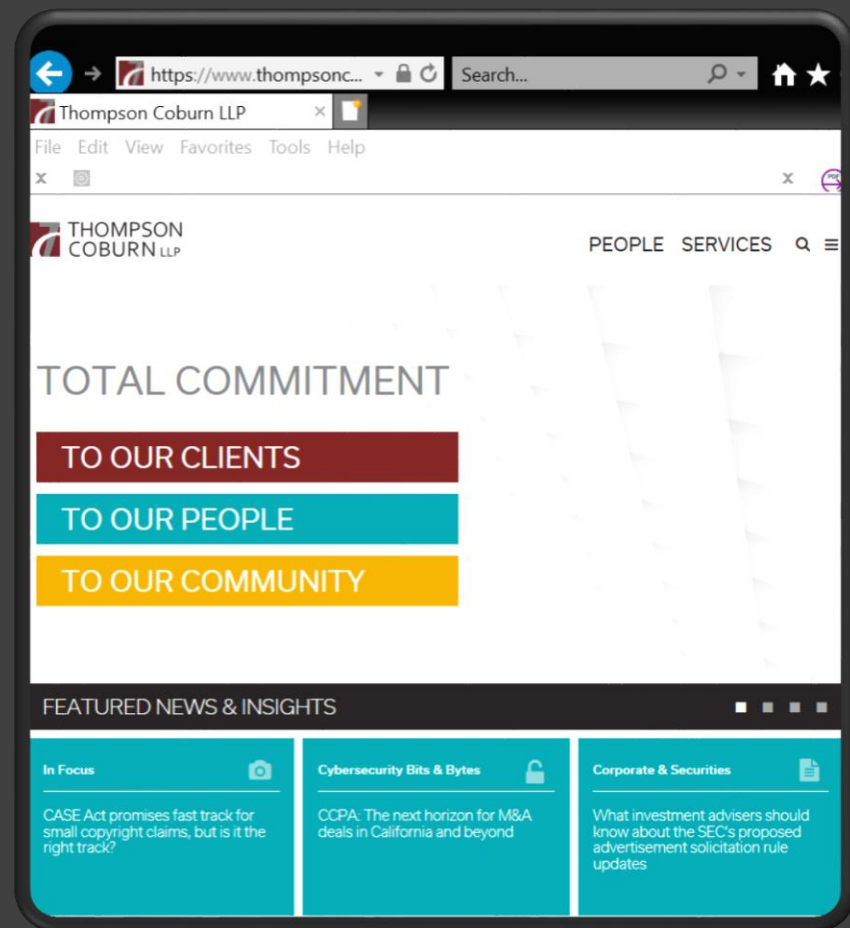
April 21, 2020

New York State Financial Aid Administrators Association

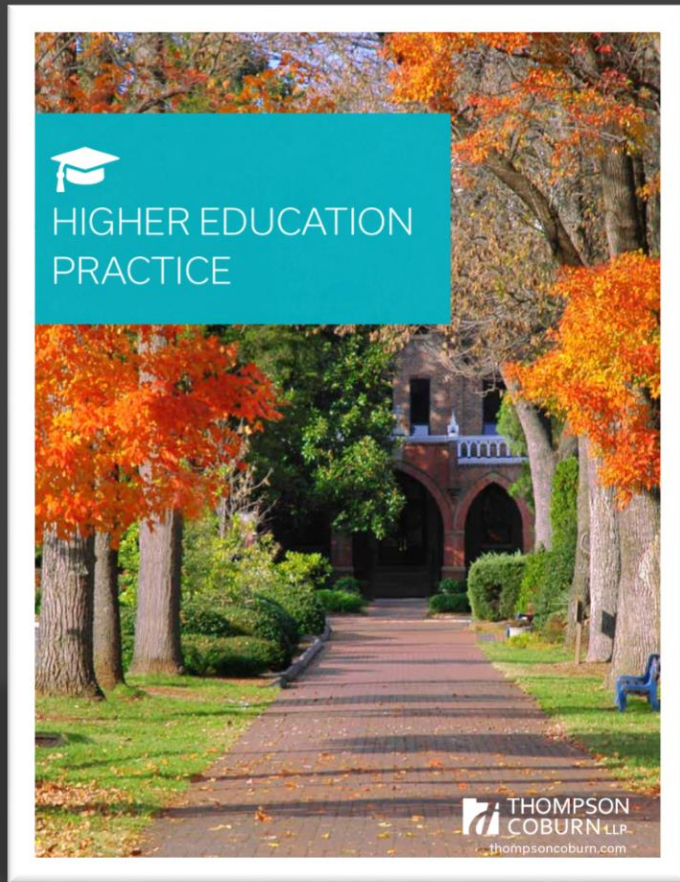
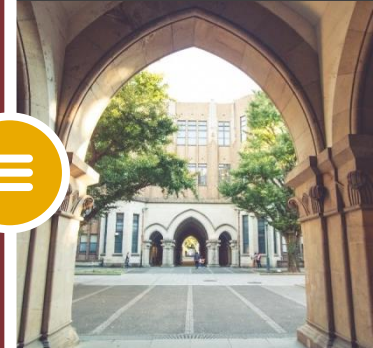
Thompson Coburn LLP



- Over **380 attorneys**
- Offices in Chicago, Los Angeles, St. Louis, Dallas, and Washington, D.C.
- Named one of the top 13 firms in the nation at providing **exceptional value** to clients by BTI Consulting



Higher Education Practice



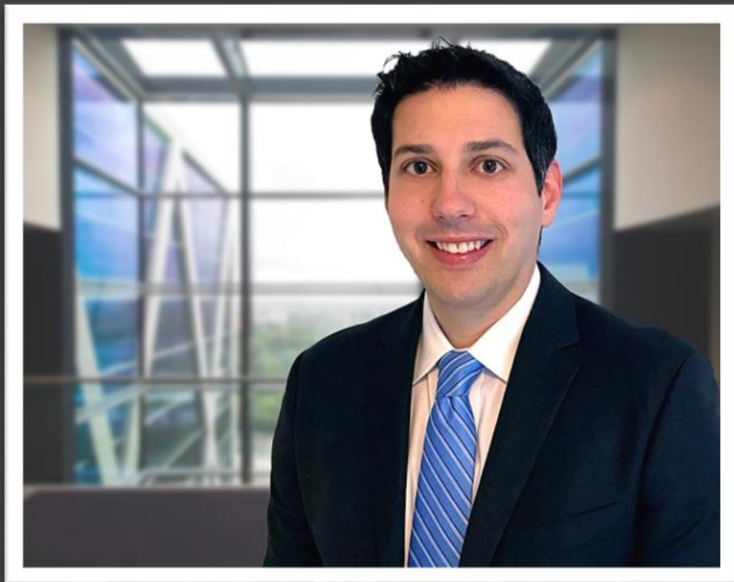
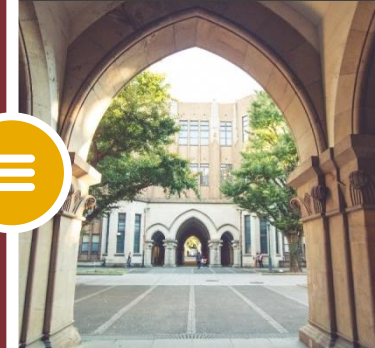
Aaron D. Lacey

Practice Leader

Host, Higher Ed Webinar Series

alacey@thompsoncoburn.com | 314-552-6405

Higher Education Practice

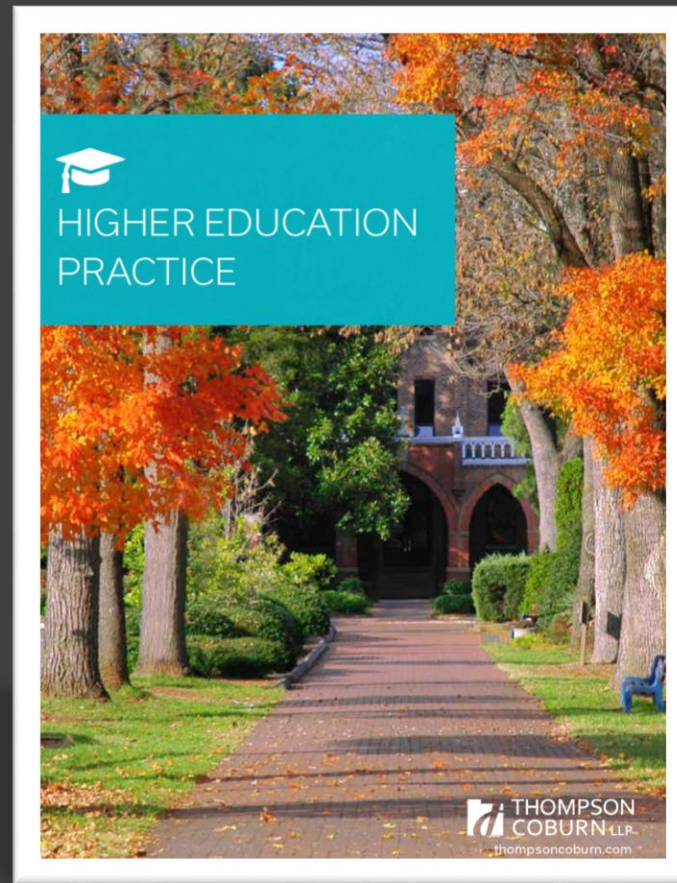


Scott Z. Goldschmidt

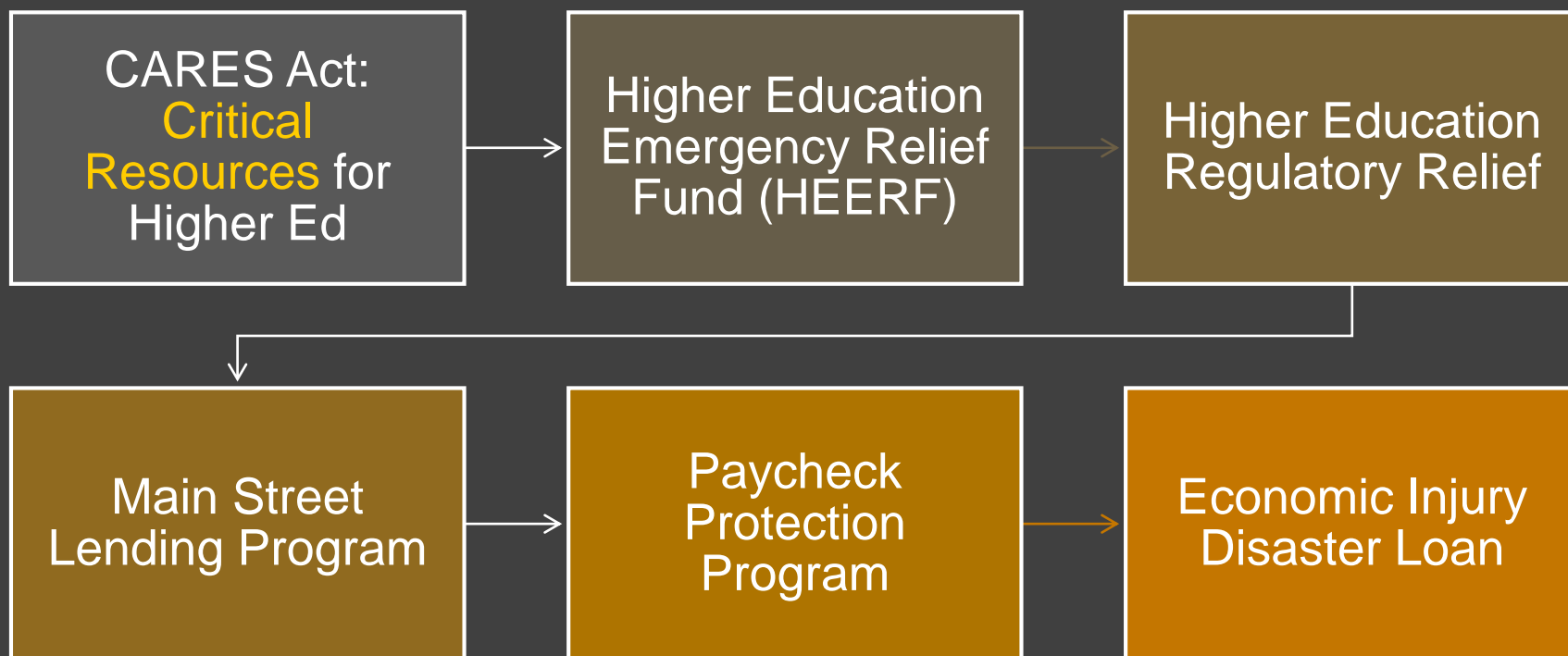
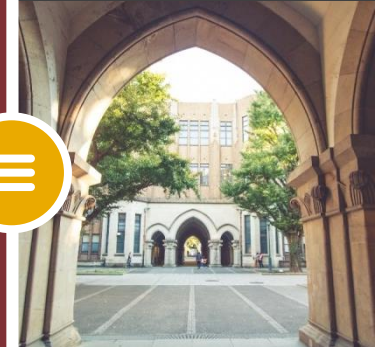
Counsel, Higher Education Practice

Former Deputy GC of Catholic University

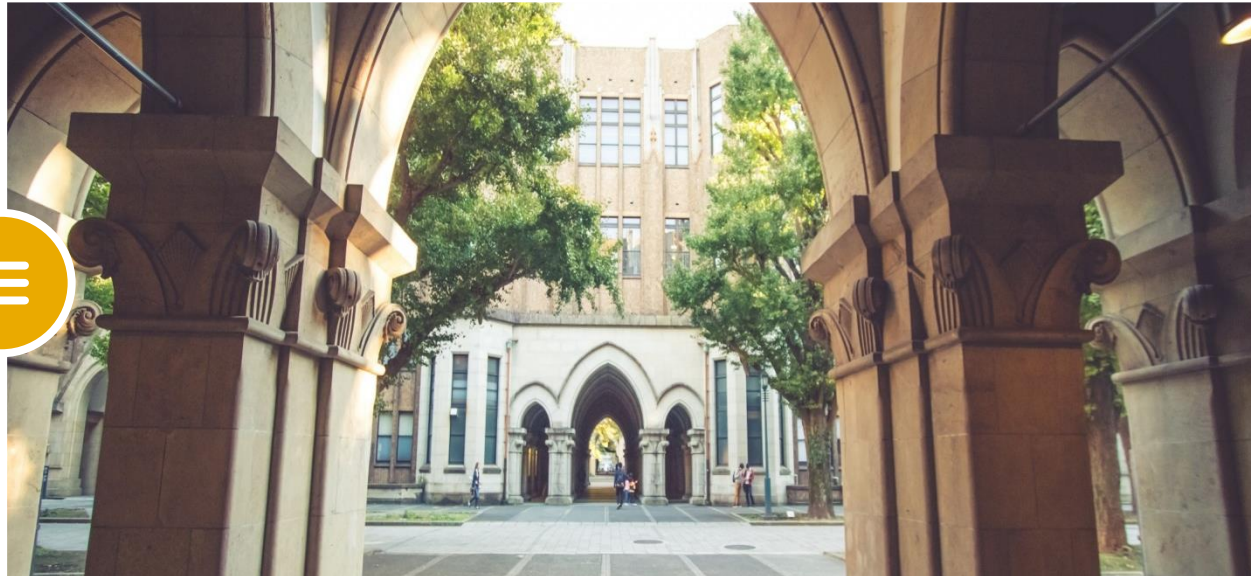
sgoldschmidt@thompsoncoburn.com | 202-585-6963



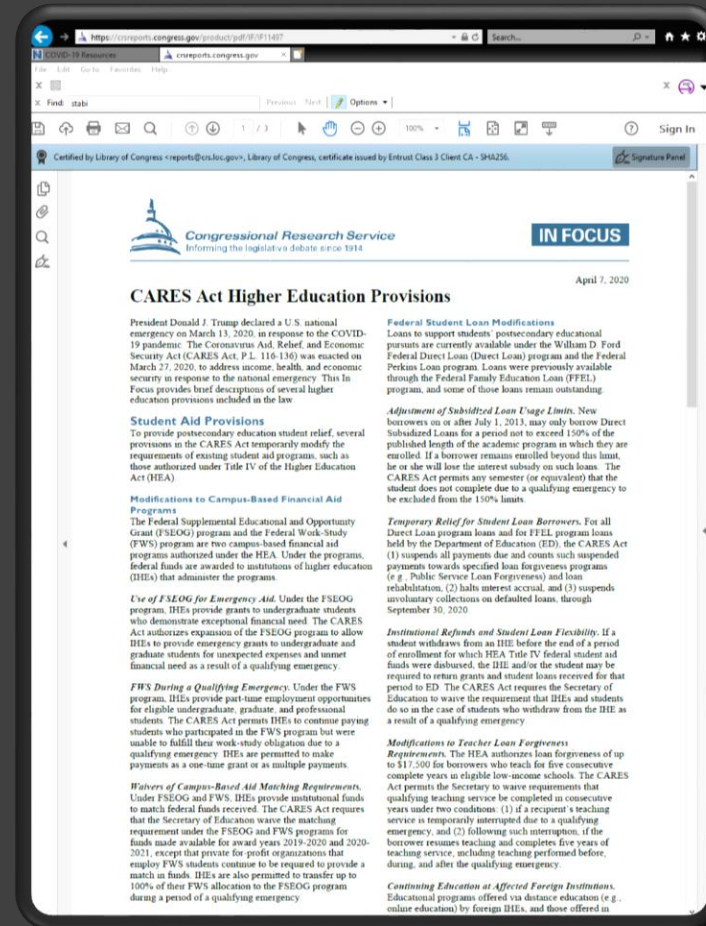
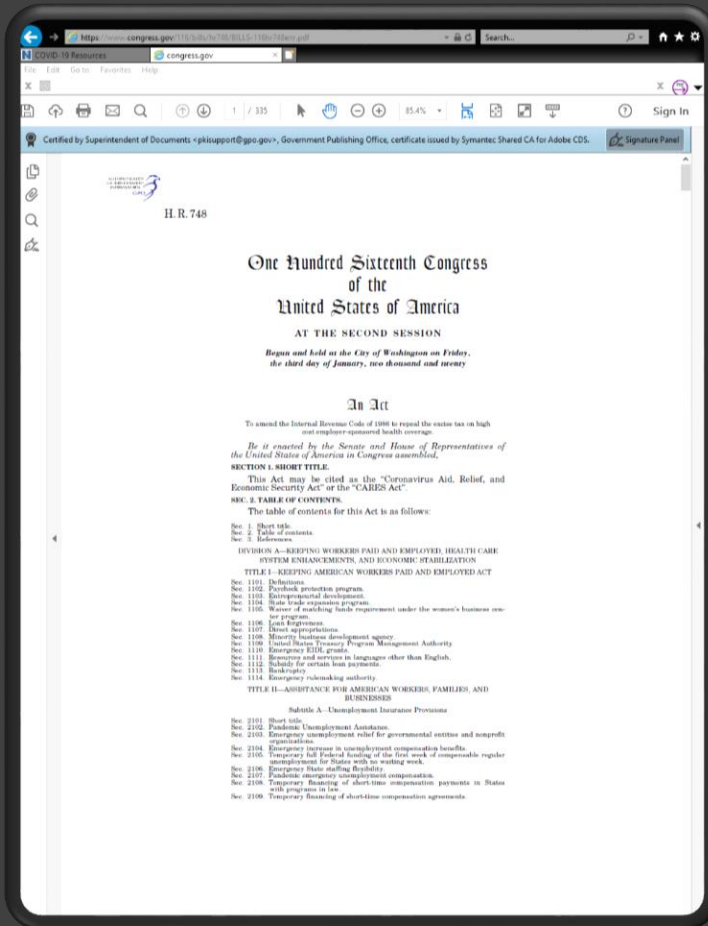
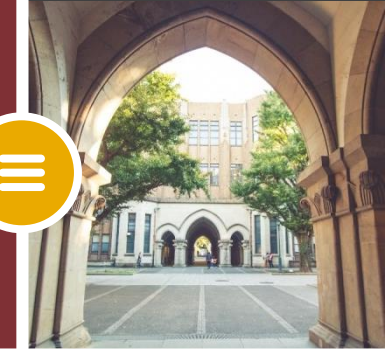
Presentation Overview



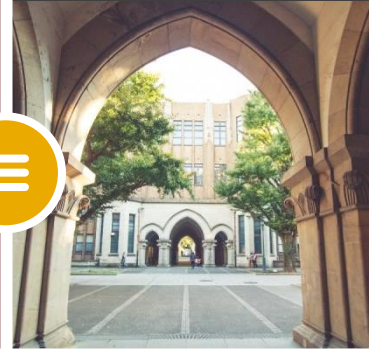
CARES Act: Critical Resources for Higher Ed



Critical Resources: Congress



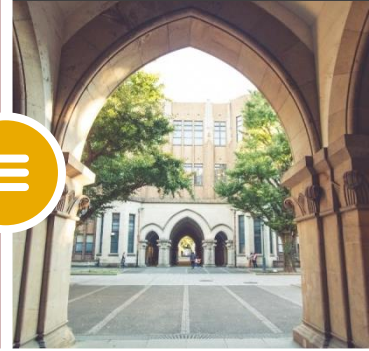
Critical Resources: ED



The screenshot shows the U.S. Department of Education website with the URL <https://ed.gov/coronavirus>. The page is titled "COVID-19 ('Coronavirus') Information and Resources for Schools and School Personnel". It features a navigation bar with links for Student Loans, Grants, Laws, and Data. The main content area includes a search bar, a "How Do I Find...?" section with links to Student loans, forgiveness, College accreditation, Every Student Succeeds Act (ESSA), FERPA, FAFSA, 1098, tax forms, and More. A "Coronavirus Resources" sidebar lists links to Coronavirus.gov, Resources and Updates from CDC, and Government Response to Coronavirus COVID-19. The main text provides information on health officials' steps to prevent the spread of COVID-19 and lists additional resources for elementary and secondary schools, including CTE and Adult Education Fiscal Waiver, Information on Governor's Emergency Education Relief (GEER) fund, and various guidance documents from the CDC and Department of Education.

The screenshot shows the U.S. Department of Education website with the URL <https://ed.gov/about/offices/participating-institutions/care-act-higher-education>. The page is titled "CARES Act: Higher Education Emergency Relief Fund". It features a navigation bar with links for Student Loans, Grants, Laws, and Data. The main content area includes a search bar, a "How Do I Find..." section with links to Student loans, forgiveness, College accreditation, Every Student Succeeds Act (ESSA), FERPA, FAFSA, 1098, tax forms, and More. A "CARES Act: Higher Education Emergency Relief Fund" sidebar lists links to Home, Programs/Initiatives, Office Contacts, Reports & Resources, News, Education Planning, Student Resources, Policy Initiatives, Accreditation, and OPE Topics A-Z. The main text provides information on the CARES Act and lists additional resources for higher education, including Grants.gov Submission Procedures and Tips for Applicants, A Guide for how to apply for funding in GRANTS.gov, and a Letter from the Secretary.

Critical Resources: Other



NASFAA
NATIONAL ASSOCIATION OF STUDENT FINANCIAL AID ADMINISTRATORS

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STUDENT AID INDEX

SHOP

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Student Aid Index

AskRegs

NASFAA U

Coronavirus (COVID-19) Web Center

This web center has been created to keep NASFAA members and the financial aid community updated on pertinent news related to the coronavirus (COVID-19). This web center is updated daily with new items marked as **NEW**.

NASFAA Articles & Statements

- NEW NASFAA Board of Directors Has Decided to Cancel 2020 National Conference in Las Vegas
- Tax Break for Employer-Paid Student Loan Contributions in COVID Relief Bill Spurs Debate
- NASFAA Joins in Support of Student Veteran Coronavirus Response Act of 2020
- NASFAA to Maintain Operational Continuity During HQ Closure

See All NASFAA COVID-19 News Coverage

NASFAA Webinars

- April 17, 2020, 2PM ET COVID-19 and Federal Student Aid: The Latest Information - **Please note updated date & time.**
- April 2, 2020 Follow-Up Webinar — COVID-19 and Federal Student Aid: What We Know
- March 17, 2020, COVID-19 and Federal Student Aid: What We Know - Transcript of Q&A Segment From March 17 Webinar

See All NASFAA Webinars

NASFAA "Off The Cuff" Podcast Episodes

- Episode 144: A Deep Dive into ED's Guidance for Using Emergency Grant Funding
- Episode 143: How Are Institutions Using Emergency Stabilization Funds?
- Episode 142: The Latest From ED on COVID-19 and Financial Aid

See All "Off The Cuff" Episodes

NASFAA AskRegs Questions & Answers

Job Board Corporate Opportunities Press Room

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Professional Development Resources Membership Get Involved About Consulting

COVID-19 Resources

Share

The novel coronavirus, or COVID-19, is a rapidly changing global health issue. This page is devoted to resources that specifically address college and university business office operations and responses to disruptions caused by coronavirus.

Questions about the federal stimulus packages and NACUBO's advocacy efforts? Contact us at advocacy@nacubo.org

How Can NACUBO Support You During This Crisis?

Contact us at membership@nacubo.org

NACUBO COVID-19 Resources

Coronavirus Resources

Find critical resources and updates that specifically address college and university business office operations and responses to disruptions caused by COVID-19.

LEARN MORE

COVID-19 Employer and Tax Resources

Explore guidance on topics including tax credits and deferrals, SBA low-interest loans for small employers, CARES Act loans for mid-size employers, and others.

LEARN MORE

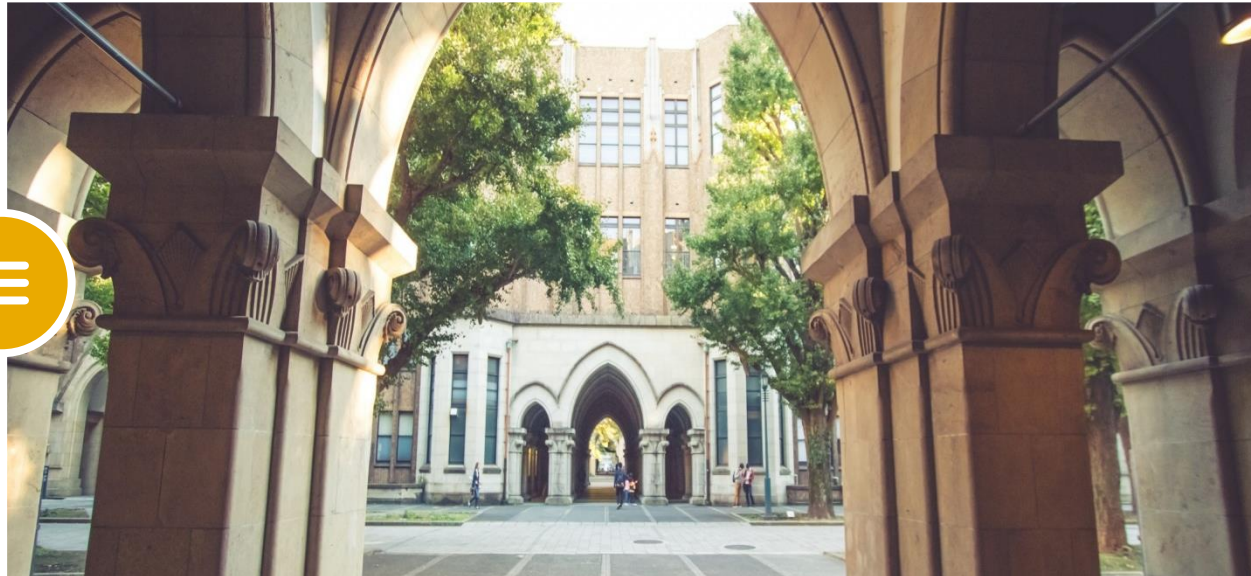
Coronavirus Relief Advocacy

Understand relief efforts built around various types of assistance, some of which are provided directly through federal agencies and some require congressional action.

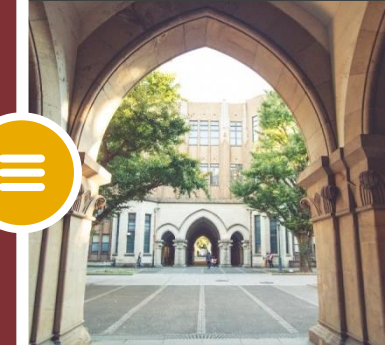
LEARN MORE

Back to Top

Higher Education Emergency Relief Fund



Funding the HEERF



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:

\$12.56 billion

- Disbursed directly to institutions to “prevent, prepare for, and respond to” COVID-19.

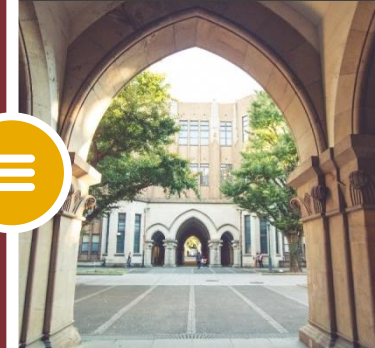
About \$1 billion

- For minority-serving institutions.

About \$350 million

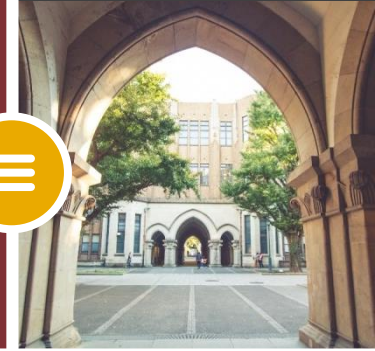
- For grants to institutions particularly impacted by coronavirus.

Allocation Formula



- 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



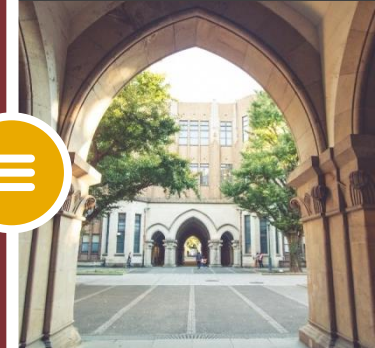
At least 50%
for student
grants

- 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

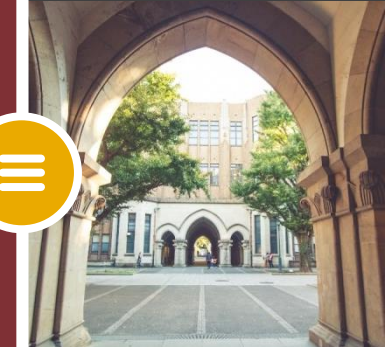
- May cover any costs associated with significant changes to the delivery of instruction due to the coronavirus, so long as such costs do not include payment to contractors for the provision of pre-enrollment recruitment activities; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship

Status of Implementation



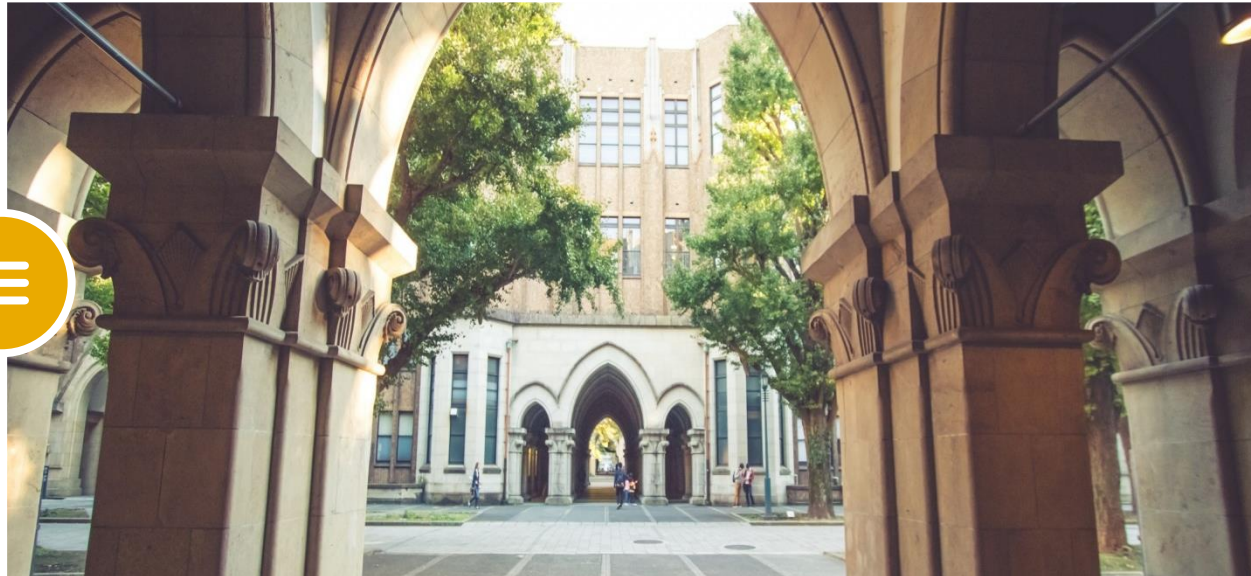
- On April 9, 2020, ED published its allocation methodology and determinations, accompanied by a letter from the Secretary and instructions for securing the first half of the allocation.
- Institutions are required to sign a Funding Certification and Agreement (FCA) for this first allocation, and to upload the signed document through the grants.gov website.
- Institutions will draw down funds through the agency's G5 system.

Status of Implementation

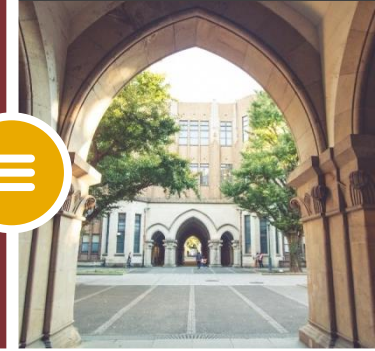


- As of April 17, 2020, **no institution** had reported receiving the first tranche of funds.
 - Many have reported frustration with grants.gov.
- ED has indicated that **more guidance** is forthcoming regarding the appropriate distribution of student grants.
- ED is working “expeditiously to allocate 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

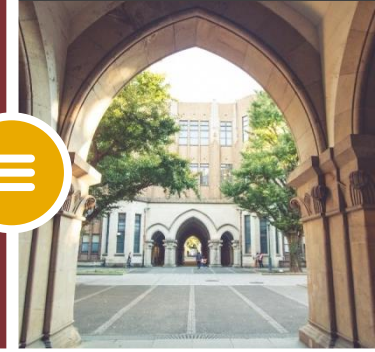


Qualified Expenses



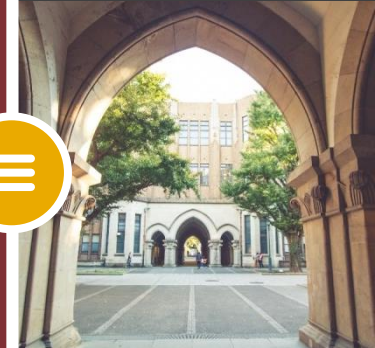
- The CARES Act states that the grants to students are “for expenses related to the disruption of campus operations due to coronavirus (**including** eligible expenses under a student’s **cost of attendance**, such as food, housing, course materials, technology, health care, and child care).”
- The Secretary acknowledges in her letter that the “**only statutory requirement**” is that the funds be used to cover such expenses.

Distribution Discretion



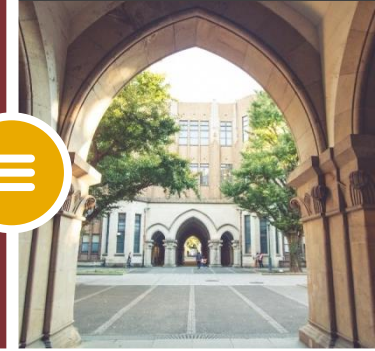
- “The CARES Act provides institutions with **significant discretion** on how to award this emergency assistance to students. This means that each institution may develop its **own system** and process for determining how to allocate these funds, which may include distributing the funds to all students 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



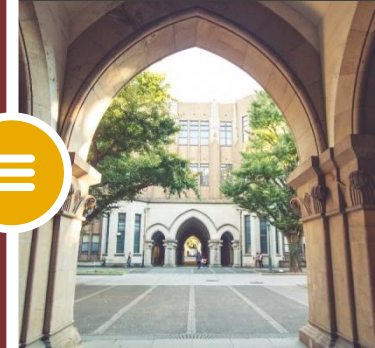
- Be mindful of each student's particular socioeconomic circumstances.
- Prioritize students with the greatest need;
- Consider establishing a maximum funding threshold (recommend maximum Pell grant as a cap (\$6,195)).
- Use PJ to adjust EFC to exclude grants.

Certifications & Limitations



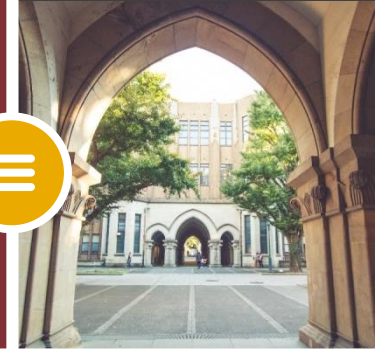
- Institutions must certify in the FCA that they will “**promptly**” make grants “**directly**” to students for qualified expenses.
- An institution is expressly **prohibited** from using the funds to “to **reimburse** itself for any costs or expenses, including but not limited to any costs associated 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



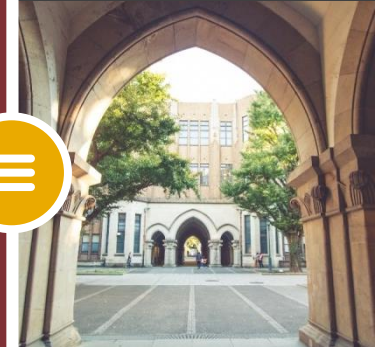
- Institutions must certify that they will “promptly and to the **greatest extent practicable**” distribute the emergency financial aid grants to students “by one year from the date of this Certification and Agreement.”
- Institutions must also “document” their “efforts to do so” as part of their reporting obligations.

Reporting and Workforce



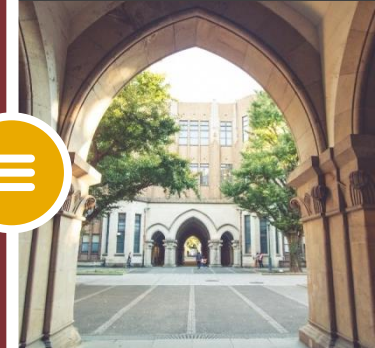
- The FCA specifies that schools shall:
 1. Report 30 days from the date of the FCA and every 45 days thereafter how grants were distributed to students, the amount of **each grant awarded to each student**, how the amount of each grant was calculated, and any instructions or directions given to students 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.”

Audit Rights



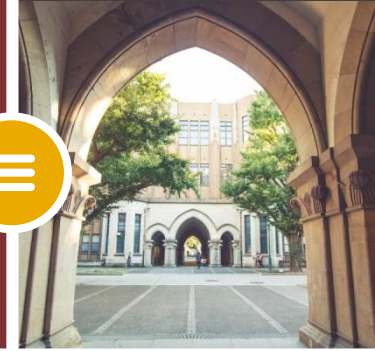
- Institutions agree that they will “cooperate with any examination of records with respect to [the funds received] by making records and authorized individuals available when requested, whether by (i) the U.S. Department of Education and/or its Inspector General; or (ii) any other federal agency, commission, or department in the lawful exercise of its jurisdiction and authority.”

Laws and Liability



- 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.

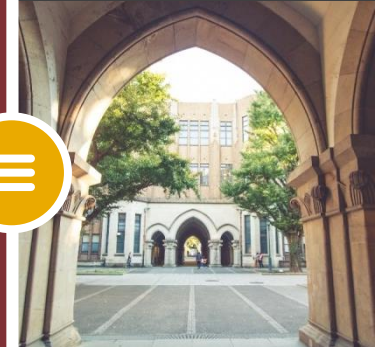
Get the money out the door sooner rather than later.

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

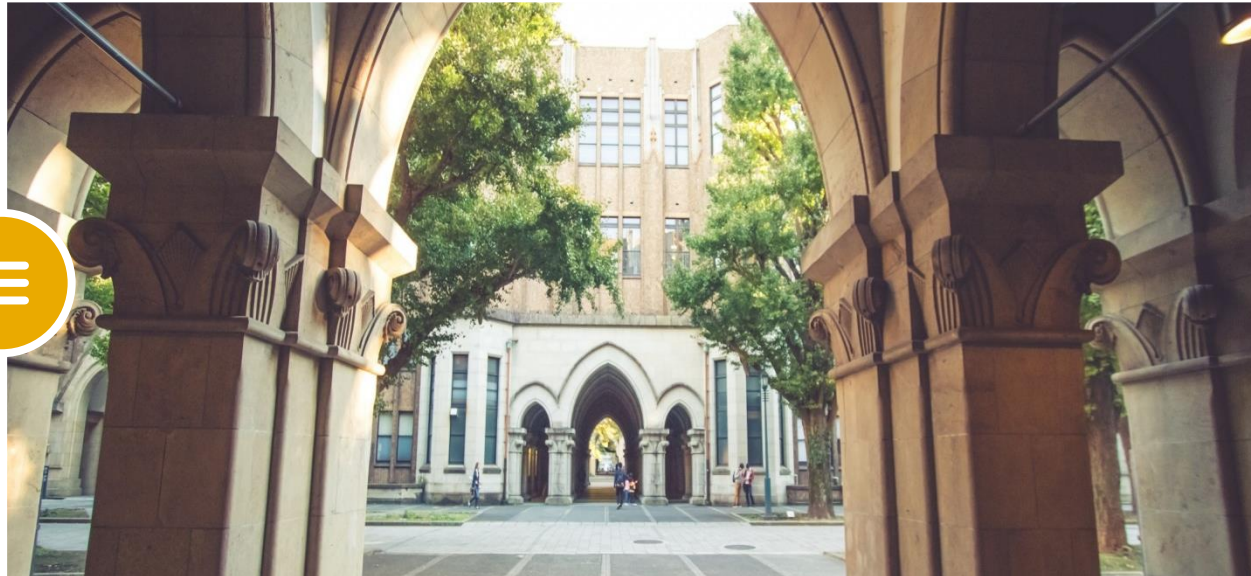
Eligibility of
students who
withdrew and
future starts

Eligibility of strictly
online students
and non-Title IV
students

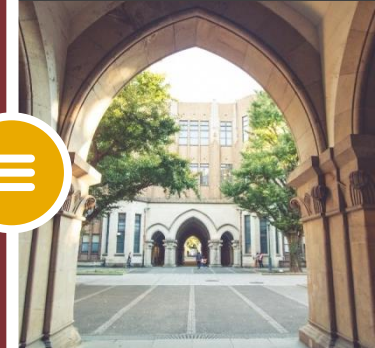
Applications,
student surveys,
certifications of
need, and receipts

One grant for all,
grants by groups,
or individual
assessment

Higher Education Regulatory Relief

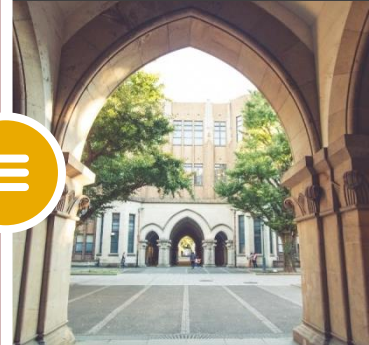


Waivers and Limitations

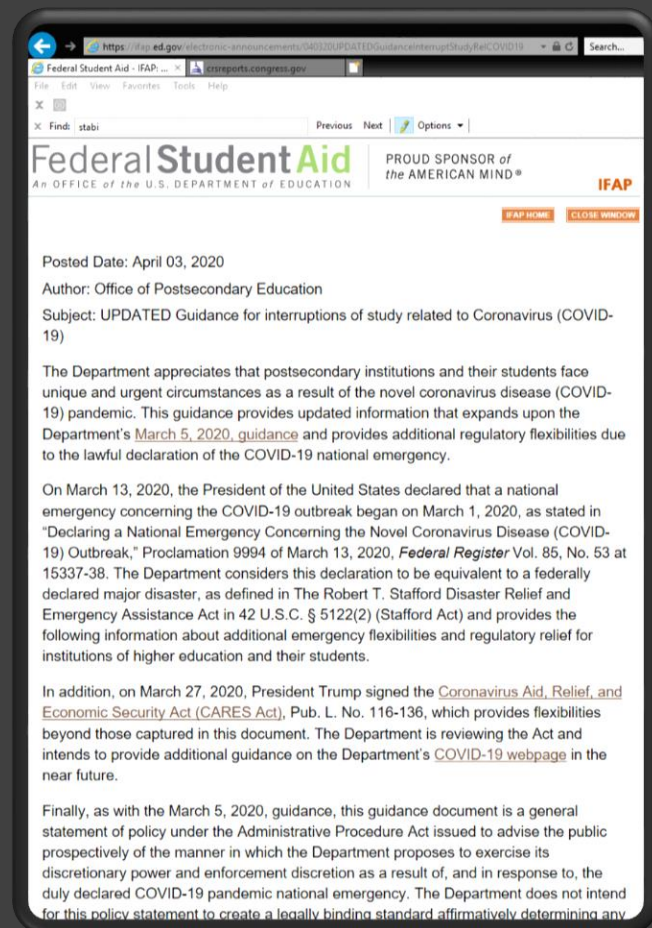


- The CARES Act temporarily modifies many Title IV requirements to provide relief to schools and borrowers. **However**, it does **not** give ED broad authority to grant statutory or regulatory waivers to institutions of higher education.
 - Early drafts of the legislation included such language, but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

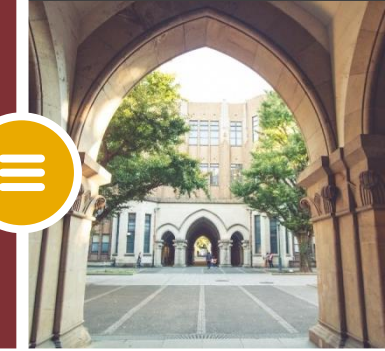
Status of Implementation



- 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.

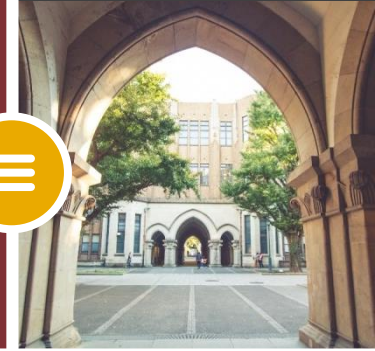


R2T4 Relief



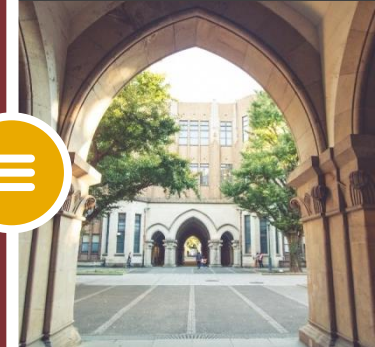
- An institution's obligations to return Title IV funds, other than assistance received as part of Federal Work Study programs, **is waived** if a student withdraws during a payment period or period of enrollment **due to COVID-19**.
 - Institutions must still perform the R2T4 calculations, report the 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.

R2T4 Relief



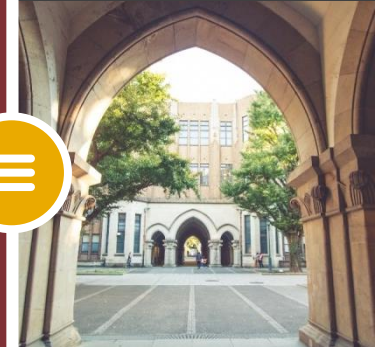
- A student's obligation to return Title IV aid is **waived** if the student withdraws due to COVID-19.
- A student's obligation to repay loans is **cancelled** if the student withdraws due to COVID-19.
- Institutions may, as a result of COVID-19, provide a student with an approved **leave of absence** 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.

Campus-Based Aid



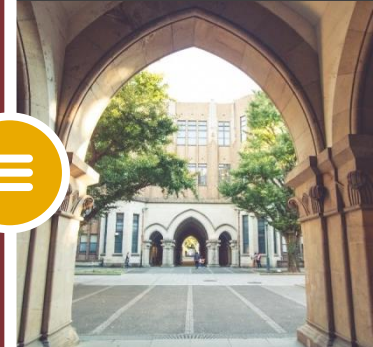
- Federal Supplemental Educational Opportunity Grant (FSEOG) allocations can be used to award additional emergency financial aid to undergraduate or graduate students.
- Institutions can transfer any unexpended Federal Work Study (FWS) allotment to the institution's FSEOG allotment for use as emergency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

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**.

Additional Relief Provisions



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.

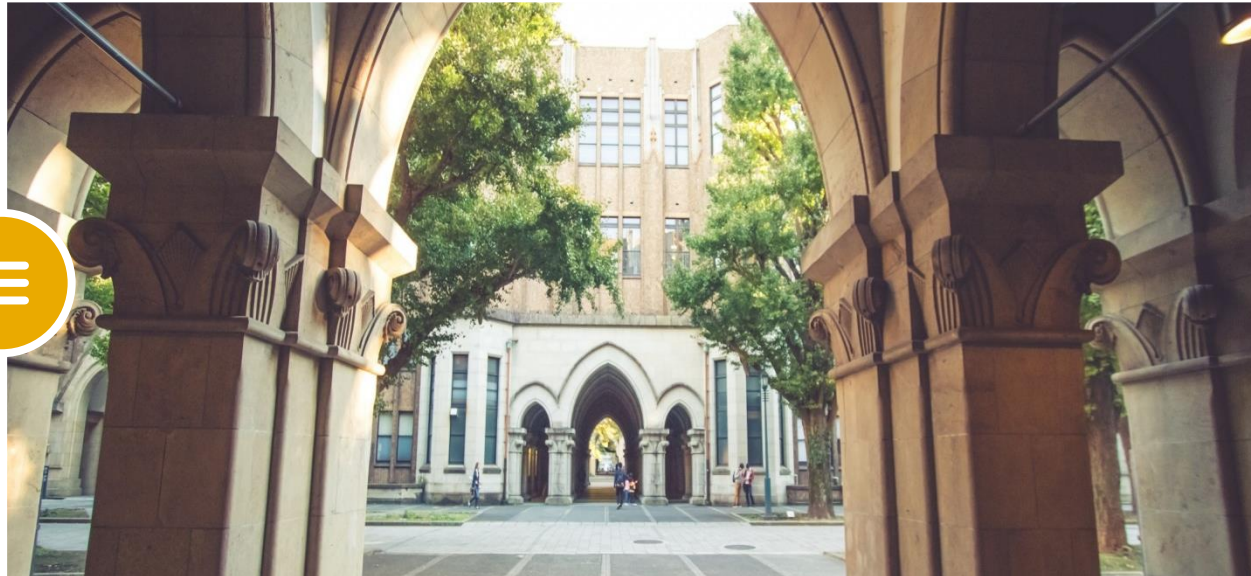
Institutions may exclude any attempted credits not completed as a result of COVID-19 from the quantitative component of the **satisfactory academic progress** calculation without requiring an appeal by the student.

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.

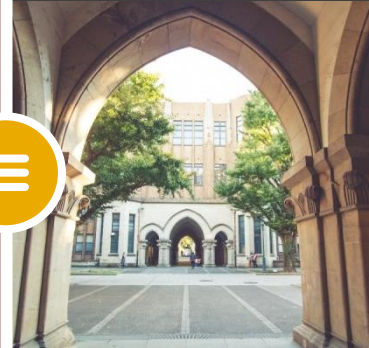
The Department may waive or modify allowable uses of funds and matching requirements for grants awarded under the **Federal TRIO and GEAR-UP programs** as a result of the COVID-19 pandemic.

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.

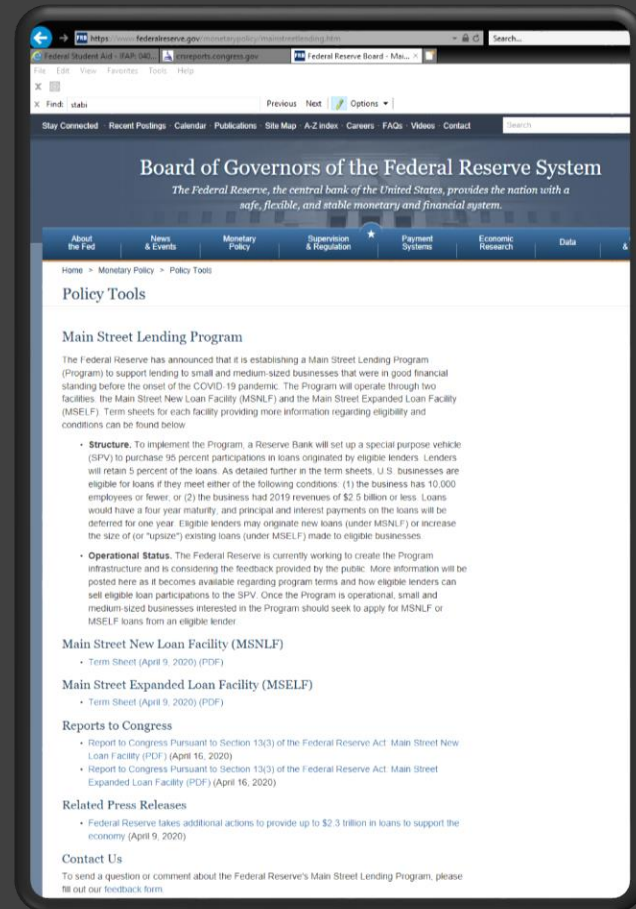
Main Street Lending Program



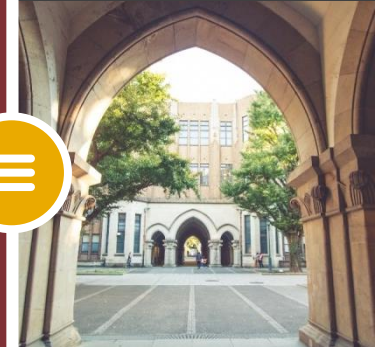
Main Street Overview



- **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).

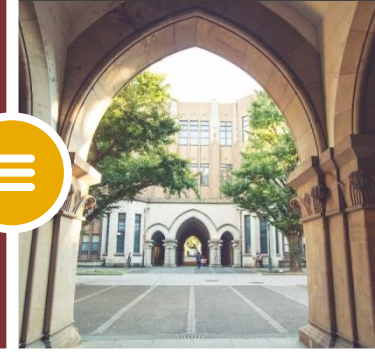


Main Street Overview



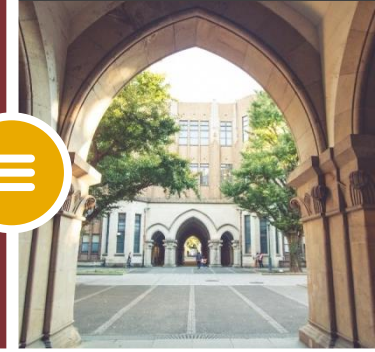
- Offers up to 4-year loans to borrowers employing up to 10,000 workers **or** with revenues of less than \$2.5 billion. Principal and interest payments will be deferred for one year.
- **Borrowers must apply through their banks.**
- Banks may originate new Main Street loans or use Main Street loans 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



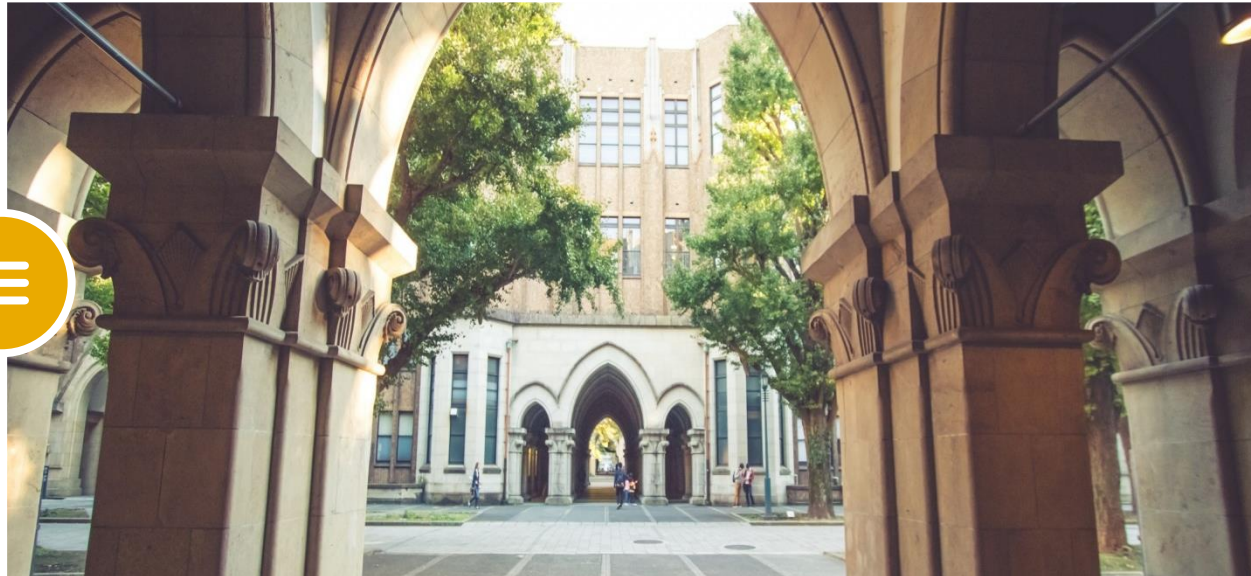
- Borrowers seeking Main Street loans must commit to make **reasonable** efforts to **maintain payroll** and **retain workers**.
- Borrowers must also follow compensation, stock repurchase, and dividend restrictions that apply to direct loan programs under the CARES Act.
- Recipients that have taken 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

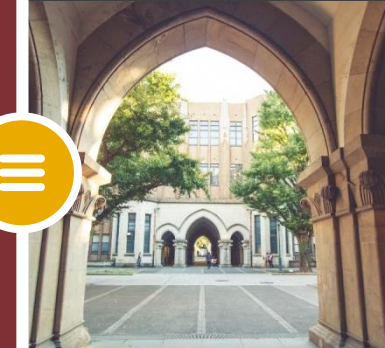


- Fed issued terms and conditions seeking public comment.
- Comment period closed April 16, 2020, and it is expected details will come **later this week**.
- This program is expected to be administered on a “**first come, first serve**” basis. Interested institutions should begin evaluating eligibility and compiling necessary documentation **immediately**.

Paycheck Protection Program

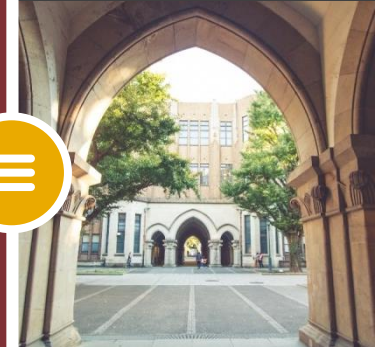


PPP Overview



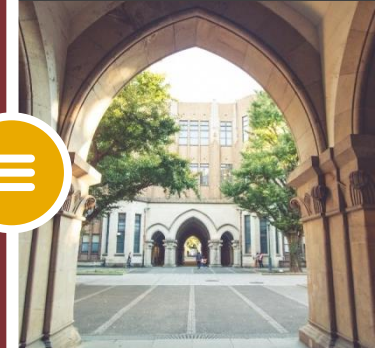
- \$349 billion for SBA forgivable loans under Section 7(a) of the Small Business Act. **Institutions must apply through their banks.**
- Institutions (including non-profits) with **less than 500 employees**, or the applicable size standard for the industry, can apply for a loan through June 30, 2020.
 - 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.

PPP Overview



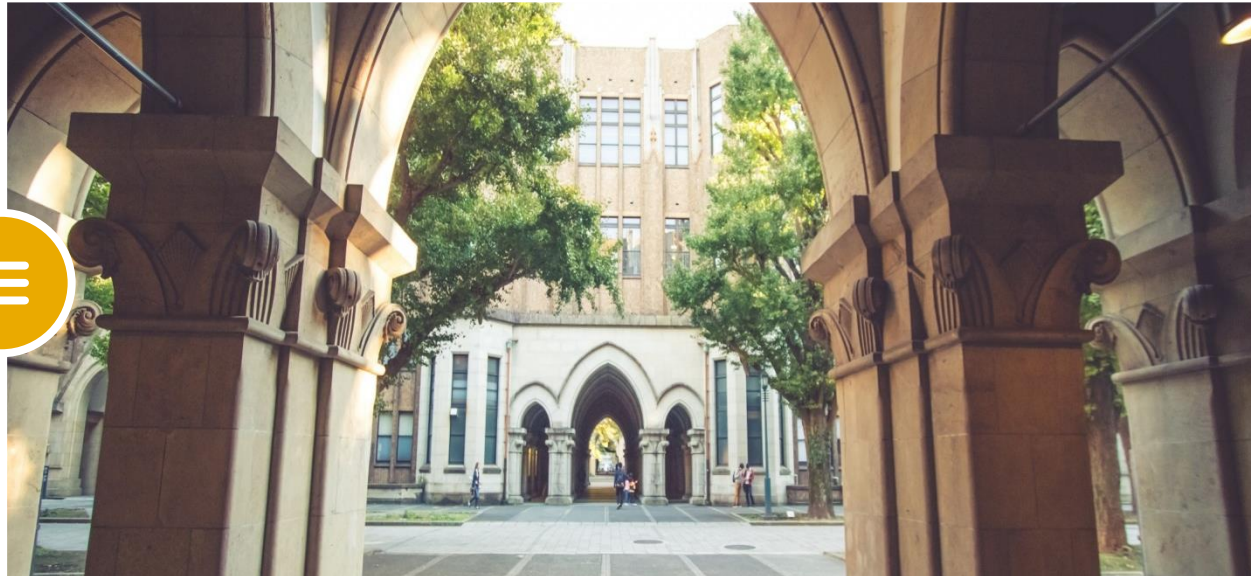
- PPP loans are capped at the lesser of \$10 million and 2.5 times the average monthly payroll costs incurred in the one-year period before the date of the loan.
 - **No personal guarantee or collateral is required for the loan.**
Loan term is 2 years at 1%.
- May be used for payroll costs, costs related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

Status of Implementation

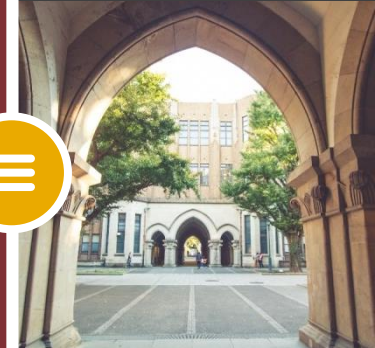


- The PPP was administered on a “**first come, first serve**” basis beginning in late March.
- On April 16, 2020, the SBA website indicated that the “SBA is currently **unable to accept** new applications for the Paycheck Protection Program based on available appropriations funding.”
- Future legislation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

Economic Injury Disaster Loan

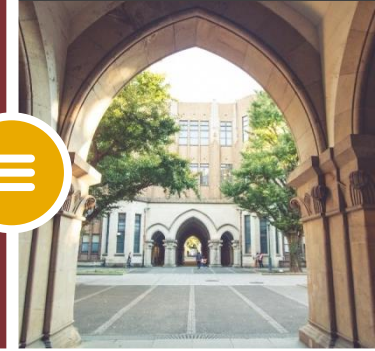


EIDL Overview



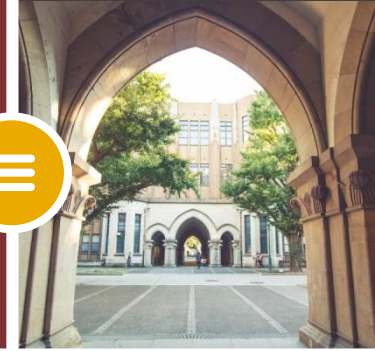
- Allocates \$10 billion and expands existing EIDL program. **Institutions must apply through their banks.**
- Proprietary institutions of higher education with not more than 500 employees, subject to SBA affiliation rules, are eligible for EIDL loans.
- Most private non-profit institutions are eligible without regard to their number of employees.

EIDL Overview



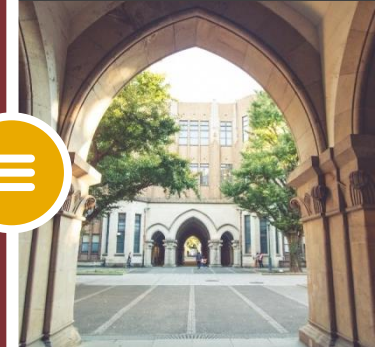
- EIDL loans offer up to \$2 million to pay fixed debts, payroll, accounts payable and other bills that cannot be paid because of the disaster's impact.
- Interest rate for EIDL loans is 3.75% for small businesses and 2.75% for nonprofits, and the maximum loan term is 30 years. There are no loan forgiveness 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



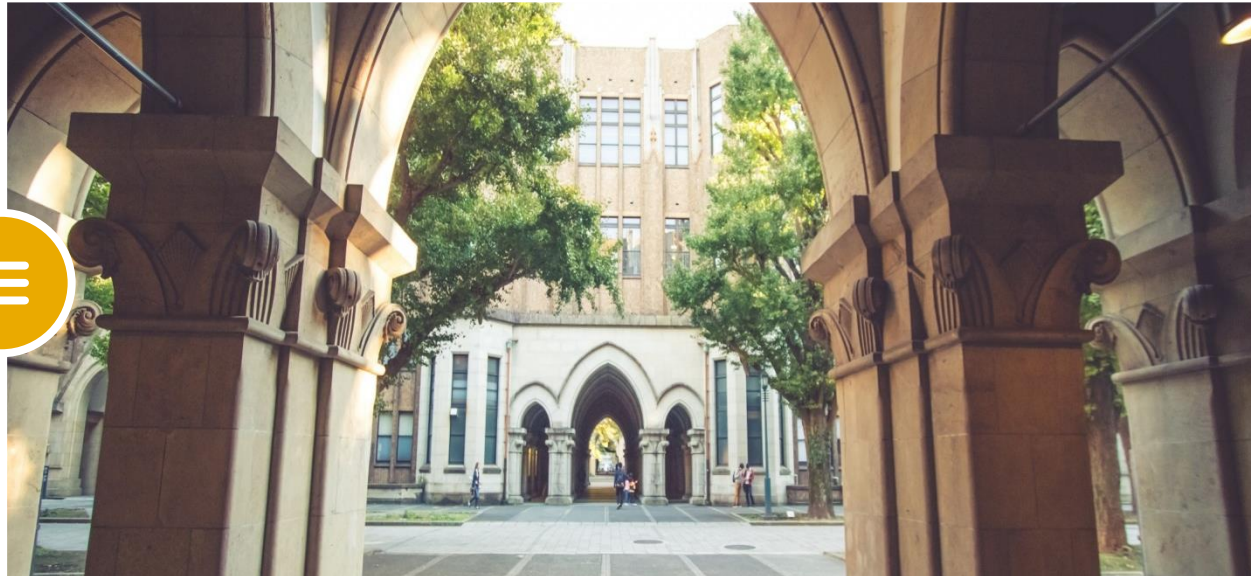
- Eligible institutions also may receive a \$10,000 emergency grant cash advance if their EIDL application is related to COVID-19.
 - Emergency grants generally will be available within 3 days of application.
 - Institutions may not be required to repay the cash advance.
- Emergency cash grants can be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

Status of Implementation

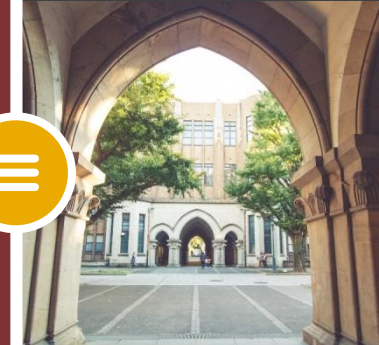


- The EIDL program was administered on a “**first come, first serve**” basis beginning in early April.
- On April 16, 2020, the SBA website indicated that the “SBA is unable to accept new applications at this time for the Economic Injury Disaster Loan (EIDL)-COVID-19 related assistance program (including EIDL Advances) based on available appropriations funding.”
- Future legislation may provide additional funding.

TC Resources



Higher Ed Webinar Series



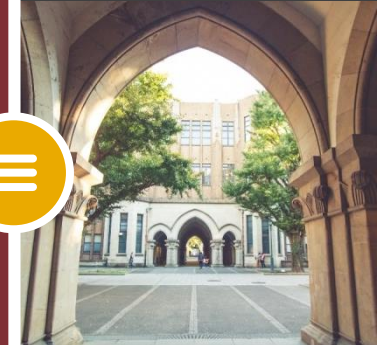
2019 | 2020 Series Calendar

August 2019	<u>Examining the ED Approval Process for Higher Ed Mergers and Acquisitions</u>
September 2019	<u>Colleges Held for Ransom: Responding to a Ransomware Attack</u>
October 2019	<u>Merging Institutions of Higher Education: Corporate and Tax Considerations</u>
December 2019	<u>A Year-End Roundup of ED Rulemaking Activity</u>
February 2020	<u>Recent Court Decisions in Student Disputes That You Should Know About</u>
March 2020	<u>Higher Education & Immigration: Five Evolving Areas to Watch</u>
April 2020	The CARES Act for Higher Education
May 2020	Cannabis and Higher Education



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Webinars on Demand



TCLE(123)

Overview of Loss Limitations;
Family Office Partnership;
Sale to Spousal Grantor Trust

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Better Together?
Competition, Price Gouging
and Other Antitrust Issues
Raised by the COVID-19
Pandemic

April 21, 2020 | [Register](#)

The CARES Act for Higher
Education: Strategy and
Implementation

April 20, 2020 | [Register](#)

Law and Order in the Time of
COVID-19: Does EPA's
Temporary Enforcement
Policy Apply to Me?

April 17, 2020

State and Federal
Implementation of Industrial
Hemp Laws

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Navigating HR Issues during
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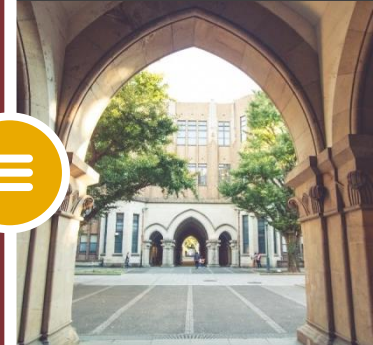
Higher Education &
Immigration: Five Evolving
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The CARES Act: More options for higher education

 [Aaron Lacey](#)  [Christopher Murray](#)  [Scott Goldschmidt](#)  April 3, 2020



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](#)

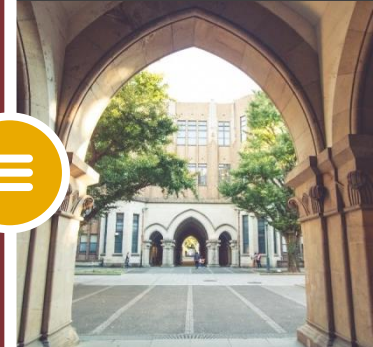
The CARES Act: Summary of provisions impacting higher education institutions and borrowers

 [Scott Goldschmidt](#)  [Aaron Lacey](#)  [Christopher Murray](#)  March 27, 2020



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

Long-Term Outlook



COVID-19: Is there a silver lining for higher education?

Aaron Lacey March 26, 2020



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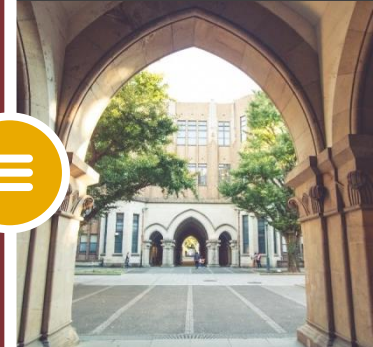
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Here at REGucation, we typically stick to legal and policy analysis, exploring the latest machinations from the U.S. Department of Education, the Hill, and the like. And these bodies certainly have been busy over the last two weeks. Indeed, the updates, 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

TC Extra Credit



REGucation ALERT



REGucation

Regulatory & Policy Insights from the
Thompson Coburn Higher Education Team



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 be completed.

[Learn More](#)



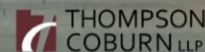
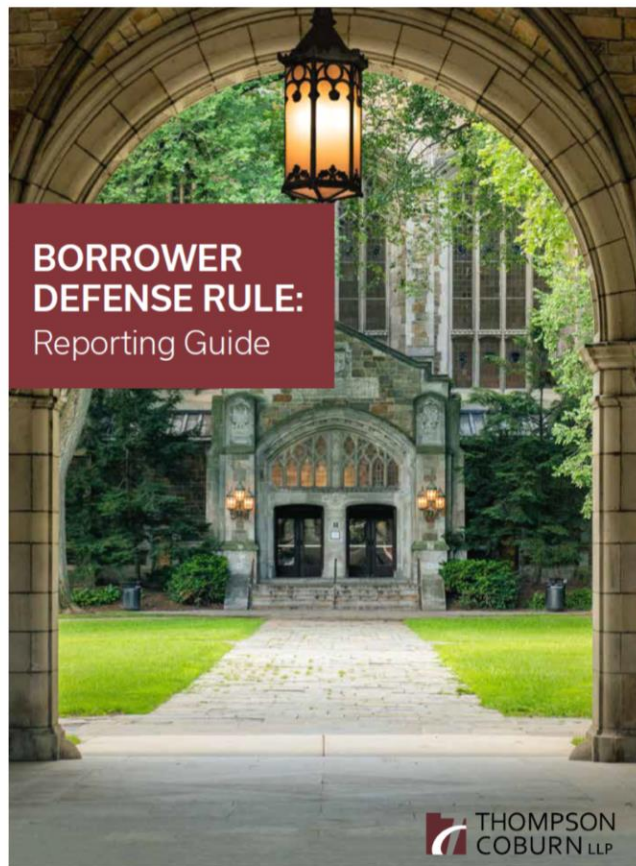
Aaron Lacey

314 552 6405 direct

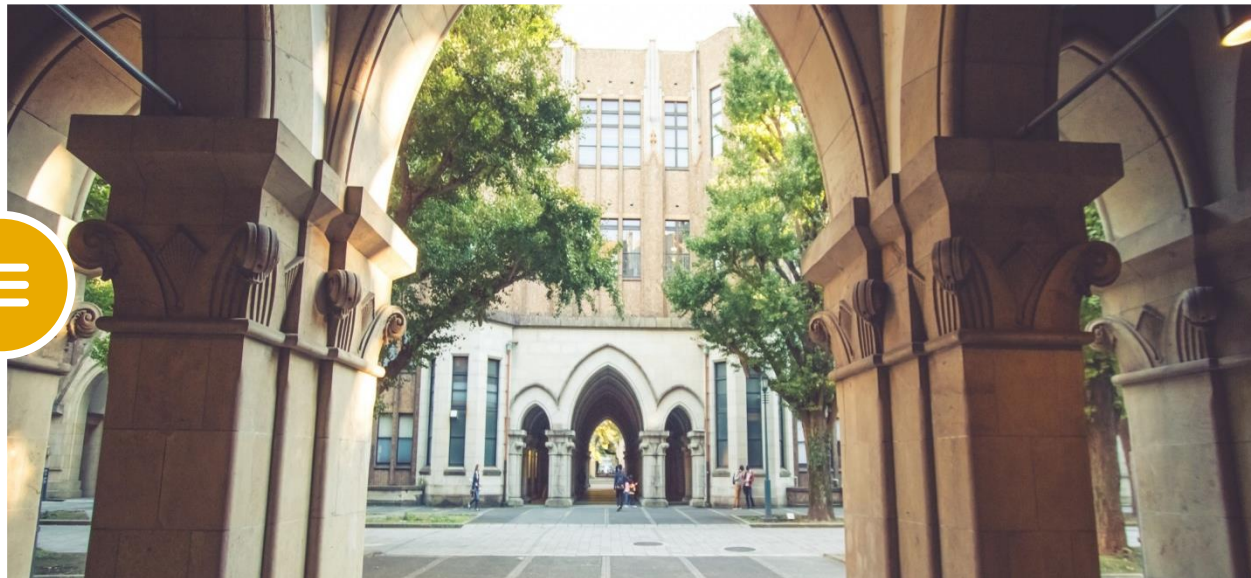
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Aaron Lacey is the leader of Thompson Coburn's Higher Education practice, host of the firm's popular [Higher Education Webinar Series](#), and editorial director of [REGucation](#), the firm's higher education law and policy blog.

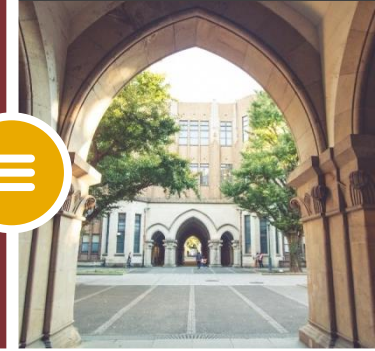
BORROWER DEFENSE RULE: Reporting Guide



Questions & Answers



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