

LEGAL UPDATES

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Department of Education Clarifies CARES Act Provisions for Higher Ed

The U.S. Department of Education (ED) issued guidance on April 21, 2020, relating to the Higher Education Emergency Relief Fund (HEERF) provided under the CARES Act. ED provided information through a stakeholder call at 2:00 p.m. ET and has released new FAQs. Below are the top-10 highlights from today's announcement.

- 1. Institutional portion now available.** The institutional portion of HEERF is now available; applications and verification forms are online. Institutions must have already submitted their certification for the student grant portion in order to apply for this second tranche of funds.
- 2. Deferred Action for Childhood Arrivals (DACA)/international students excluded.** All HEERF student grants must be provided to Title IV-eligible students. This means DACA students and the vast majority of international students (unless they otherwise are eligible for Title IV) are excluded.
- 3. Reimbursements for prior grants to students (student portion).** Institutions may not reimburse themselves for past payments to students with the student portion, with one exception: institutions may reimburse themselves if prior payments were:
 - a. Emergency grants;
 - b. To Title-IV eligible students;
 - c. Made after March 27, 2020 (CARES Act enactment date);
 - d. Intended to cover expenses related to the disruption of campus operations due to COVID-19 (e.g., food, housing, course materials, technology, health care and childcare.).

Consistent with this, institutions also may not use the student portion to reimburse themselves for continuing to pay student workers from institutional funds for campus jobs.

4. **Outstanding account balances (student portion).** Institutions may not use the student portion to satisfy a student's outstanding account balance. The student may use his or her student grant for expenses related to the disruption of campus operations due to COVID-19. These funds are intended to flow directly to students unencumbered by institutional fees/cost recoupment.
5. **Tracking/reporting (student portion).** ED is *not* requiring students or institutions to report or track how the student portion is used.
6. **Refunds (institutional portion).** Institutions are permitted to use their portion for reimbursements of room, board and fees that they will or have made to students.
7. **Online management/bundled services considerations (institutional portion).** Institutions may use their portion for online program management costs, including on a per-student basis (e.g., cost of adding new students to online platform, on per-student basis). However, these funds cannot be used for recruitment, marketing, advertising, etc., or for the related portion of a bundled services agreement for such costs.
8. **Precluded uses.** Because ED determined that these are not considered institutional costs relating to COVID-19, HEERF funds cannot be used for senior administrative or executive salary, benefits, bonuses, etc. HEERF funds also cannot be used for stock buybacks, shareholder dividends/benefits, stock options, etc.
9. **For-profit school considerations.** HEERF funds will not be included as revenue for 90/10 purposes.
10. **More guidance (institutional portion).** Institutions may flexibly use their portion for expenses related to significant changes to the delivery of instruction due to the coronavirus. ED committed to release new guidance on the institutional portion in the future.

Comprehensive CARES Act and COVID-19 guidance

Husch Blackwell's CARES Act resource team helps clients identify available assistance using industry-specific updates on changing agency rulemakings. Our COVID-19 response team provides clients with an online legal Toolkit to address challenges presented by the coronavirus outbreak, including rapidly changing orders on a state-by-state basis. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.