

LEGAL UPDATES

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New Year, New College and University HEERF COVID Relief

Via the Consolidated Appropriations Act, 2021, signed into law on December 27, 2020, Congress allocated \$23 billion in emergency relief aid for public and nonprofit colleges, universities, and their students^[1]—\$9 billion more than the amount previously allocated under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.^[2] The new law adds funds to the Higher Education Emergency Relief Fund (HEERF), to be distributed by the U.S. Department of Education (ED). ED is to distribute the funds “to the extent practicable” within 30 days of the law’s enactment.

Slightly revised allocation formula. The new funding allocation is weighted to favor Pell-eligible students; considers part-time students; and, to the tune of 2% of the overall allocation, provides funds for students who are enrolled in exclusively distance education courses.

Required student emergency grant spending. Out of the new funds, institutions must provide at least the same amount (not percentage) in emergency grants to students as they were required to provide under Sections 18004(a)(1) and (c) of division B of the CARES Act (the amount commonly referred to as most schools’ “student share” of CARES Act funds).

High-need student priority. The new law states that, in making emergency grants, institutions “shall prioritize” making grants to students with exceptional need, such as those who are Pell-eligible.

Eligibility FOR student emergency grants. A pending (and currently contested) ED Interim Final Rule directed at CARES Act funds provides that students must be eligible for Title IV Federal Student Aid funding in order to receive emergency grants under the CARES Act. This rule has been challenged in multiple jurisdictions. It remains to be seen whether ED will extend this interpretation to emergency grants made under this new tranche of funds.

Moreover, the new law—unlike the CARES Act—expressly states that grants may be made to students enrolled exclusively in distance education.

Allowable expenses. The new law allows funds to be used to reimburse students and institutions for a broader swath of expenses than does the CARES Act. Student emergency grants may be provided to cover:

Any element of a student’s Cost of Attendance or

“Emergency costs that arise due to coronavirus.”

While the new law cites possible uses to support housing, childcare, food, and other needs—unlike the CARES Act—the new law does **not** require that these expenses be tied to campus disruption due to COVID-19.

Institutions may use remaining funds to “defray expenses associated with coronavirus,” again removing the CARES Act requirement that expenses be related to a change in delivery of instruction. Institutions may use these new funds for the express purposes of offsetting lost revenue and expenses already incurred. Additional allowable uses articulated by the law include: technology costs related to a transition to distance education, training of faculty and staff, and payroll. The new law also allows colleges and universities to fund student support activities that address needs related to COVID-19.[3]

Employee and contractor payments. The new law maintains the CARES Act requirement that institutions receiving funding must, “to the greatest extent practicable” continue to pay their employees and contractors during the period of any disruptions or closures related to COVID-19.

Endowment tax institutions. Institutions subject to the endowment tax for 2019 would receive decreased allocations, though ED may waive this reduction in cases of demonstrated need.

Reporting. Like the CARES Act, the new law provides for ongoing reports accounting for use of funds.

What this means to you

While institutions await further guidance, they should consider the following:

How your institution will distribute new funds to students, including whether you may need to revise your earlier (CARES Act) approach to identifying recipients, articulating allowable expenses, and distributing emergency grants.

Which of your institution’s expenses and initiatives will be covered by the new funds.

Whether your institution will re-designate any remaining CARES Act funds in light of the new law's added flexibilities.

How your institution will prepare for inevitable review of federal COVID relief spending. We are seeing the first round of ED audits of CARES Act HEERF spending, calling on institutions to document their processes and allocations of prior funding. Future audits will certainly encompass funds provided under the new law.

Contact us

As guidance develops, Husch Blackwell will provide updates and additional information as to how institutions can best proceed to secure needed support. Should you need immediate assistance, please contact Julie Miceli, Anne Cartwright, Elizabeth Samples, Lisa Hoskins or your Husch Blackwell attorney.

CARES Act, COVID-19 & Return-to-Work Guidance

Husch Blackwell provides guidance regarding COVID-19 updates, the CARES Act, and rapidly changing state-by-state orders, including those that impact stay-at-home and return-to-work protocols. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.

[1] The new law sets aside a separate, \$681 million for proprietary institutions to make emergency grants to students.

[2] The new law also includes a number of other provisions related to Federal Student Aid—such as long-awaited simplification of the Free Application for Federal Student Aid, subsidized loan revisions, and Pell grants for prisoners—many of which are slated to take effect in 2023. The new law does not extend the suspension period on student loan payments, collections, and interest previously set by ED to expire on January 31, 2021.

[3] Similar to the CARES Act, the funds may not be used for certain recruiting activities provided by contractors, endowments, athletics capital projects, sectarian instruction, religious worship, or benefits for senior administrators or executives.