

First Look at Postsecondary Institution Funding Under the CARES Act

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On March 27, the president signed into law a \$2 trillion relief and stimulus package – the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) – designed to address the economic impact caused by the COVID-19 pandemic. The CARES Act includes a \$30.75 billion Education Stabilization Fund to assist states, local school districts and postsecondary institutions in responding to COVID-19, particularly with respect to the mass transition to online learning. Absent further legislation, the fund remains available through September 30, 2021. This post highlights the Higher Education Emergency Relief Fund, a subpart of the stabilization fund, available to public and private institutions of higher education.

The stabilization fund also designates funding to public school districts (via subgrants to local education agencies), which we will cover in a later post. Separate from the fund, the CARES Act authorizes the Department of Education (ED) to provide important regulatory relief to school districts and postsecondary institutions, as well as to student borrowers, which we will also cover in a separate post.

Although the fund will undoubtedly provide important financial support to many schools struggling in response to the disruption caused by the COVID-19 outbreak, it is important to stress that currently, the timing and procedures to access these funds remain uncertain: ED will still need to develop procedures for schools to receive, report and verify the legitimate use of these funds under the CARES Act.

Key takeaways

- The funding can be used to cover costs associated with significant changes to the delivery of instruction in response to COVID-19
- The CARES Act itself contains no guidance on process or timing for disbursing funds. ED will need to issue further clarifications and procedures to implement the CARES Act and allocate and direct funds to institutions. When the money will actually reach institutions is an open question
- The CARES Act is unclear and further guidance may be forthcoming on whether for-profit institutions are eligible for the fund
- Because allocations are tied to the on-ground student population, institutions with large online populations and/or limited on-ground presence *prior* to the COVID-19 outbreak may not receive significant funding. Similarly, because the allocations largely tied to Pell Grant receipts, schools with small Pell populations may receive limited funding. In practical terms, these two factors mean that public institutions will likely be the biggest recipients
- Half of funding must be used to provide emergency financial aid grants to students related to the disruption of study
- Schools that relied on or plan to use OPMs to transition to online delivery may be unable to have their costs reimbursed. Funding cannot be used for payments to contractors for “pre-enrollment recruitment activities,” which could present a challenge for many OPMs that structure their fees as tuition shares and therefore do not distinguish payments made for recruiting activities from payments for other eligible services under the CARES Act

Note also that some institutions – those with fewer than 500 employees – may be eligible for emergency loans under the SBA programs outlined in the CARES Act, on which Cooley has provided guidance [here](#).

Overview of the Higher Education Emergency Relief Fund

The CARES Act reserves approximately \$14 billion to ED to designate to institutions of higher education to prevent, prepare for, and respond to COVID-19. The law specifies that ED will distribute funding as it distributes federal student aid funds, although it is not clear yet whether institutions will need to apply or if the distribution will be automatic.

Eligibility

Of that total, approximately 10% is reserved for additional awards to HBCUs and minority-serving institutions while the remaining 90% of the higher education relief fund will go to “institutions of higher education,” as defined in Title I of the Higher Education Act (HEA).

As an initial matter, based on the citation to Title I of the HEA, it is unclear at this time whether for-profit institutions are eligible to receive this funding under the language of the CARES Act. Title I of the HEA contains two definitions of institution of higher education. The first, at 20 U.S.C. § 1001, includes public and non-profit institutions. The second, 20 U.S.C. § 1002, added at a later date, brings in for-profit institutions. However, according to its own language, 20 U.S.C. § 1002 is used narrowly, only for purposes of the Title IV student aid programs, and for-profit institutions are generally excluded from ED’s other non-Title IV grant programs. Thus, because the meaning of the CARES Act language – and ED’s ultimate interpretation of that language – is still unsettled, it is important that for-profit schools understand that there may be further guidance on the eligibility question.

For institutions eligible to participate in the fund, the legislation explains how funding will be allocated, but provides little additional information in how or when schools might receive funds.

Allocations are tied largely to Pell Grant receipts in the *on-ground* student population, disregarding students who were enrolled exclusively in distance education prior to the COVID-19 outbreak. Distribution will be (1) 75% according to the relative share of full-time equivalent (FTE) enrollment of Pell recipients who are *not* exclusively enrolled in distance education courses prior to the COVID-19 emergency, and (2) 25% according to the relative share of FTE enrollment of students who were *not* Pell recipients, who are *not* exclusively enrolled in distance education courses prior to the COVID-19 emergency.

Use of funds

The funding can be used broadly to cover costs associated with significant changes to the delivery of instruction due to COVID-19, with a few exceptions, and institutions will be required to account to ED on the use of funds. First, not less than 50% of funds must be used to provide emergency financial aid grants to students for expenses related to the disruption of campus operations (including eligible expenses under a student’s cost of attendance, such as food, housing, course materials, technology, healthcare and childcare). Second, funding cannot be used for (1) payments to contractors for the provision of pre-enrollment recruitment activities; (2) endowments; or (3) capital outlays for facilities related to athletics, sectarian instruction or religious worship. Given the broad uses permitted by the CARES Act, we anticipate ED will issue further guidance on what types of costs will be covered.

The future

Guidance on this is changing quickly, and we will provide continuing updates. The CARES Act is likely one component of what will be a series of measures intended to blunt the negative impact of COVID-19. We will be following closely.

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