

# Institutional Relief Under the CARES Act

April 3, 2020

The CARES Act authorizes the US Department of Education (ED) to allow institutions to ease certain federal student aid requirements, provide relief for certain students and borrowers with federally held student loans and relax certain requirements applicable to foreign institutions, as well as historically black colleges and universities (HBCUs) and other minority-serving institutions (MSIs). These regulatory relief provisions supplement the stimulus funding made available by the CARES Act to institutions of higher education, which we discussed in a previous [post](#).

The regulatory flexibility outlined in the CARES Act follows previous [guidance](#) from ED in early March that relaxed certain federal student aid rules and authorizes further flexibility that ED viewed as outside its authority without Congressional action, as we discussed in [previous posts](#). Several of the provisions likely require further authorization or clarification from ED, which we expect is forthcoming. In the meantime, institutions should move forward in implementing these helpful forms of institutional relief.

## There are five key categories of institutional relief

- **Leave of absence:** Institutions have greater flexibility to grant an approved leave of absence to students who can return within the same payment period.
- **R2T4:** Institutions are not required to return Title IV funds to federal programs when a student withdraws from the institution. Institutions must continue to perform R2T4 calculations and return funds as appropriate to withdrawn students.
- **Student aid:** Institutions can award students emergency aid under the Federal Supplemental Educational Opportunity Grant (FSEOG) program.
- **Foreign schools:** Foreign institutions may provide coursework via distance education and enter into written arrangements with US institutions if the home country has declared a qualifying emergency.
- **HBCU and MSI grant programs:** ED can relax requirements for certain grant programs, including programs in which HBCUs and other MSIs participate.

## Approved leave of absence

- Under standard Title IV rules, institutions are permitted to grant a student a leave of absence (LOA) only if the student can resume enrollment at the same point in his or her academic program. Typically, this requirement prevents term-based institutions from granting a LOA because a student is usually unable to return to the same point in the program because the program has continued in the student's absence.
- An institution is now able to grant a student a LOA even if the student is not able to return to the same point in the program, so long as the student returns from the LOA within the same payment period or equivalent (e.g., within the same semester). Return from an LOA means to resume academic work in the program of study, regardless of the current delivery method.
- For example, if a student needs time to find alternative housing, the institution could grant an approved LOA so long as the student resumed participation in the program during the same payment period or equivalent. If a student is unable to return from LOA within the same payment period or equivalent, the student is considered to have withdrawn for Title IV purposes.
- Institutions should consider granting approved LOAs given student needs and his or her ability to return within the same term of payment.

## Return to Title IV and overpayments

- Institutions are typically obligated to return unearned Title IV funds to ED when a student withdraws from the institution, commonly referred to as return to Title IV or R2T4.
- The CARES Act provides for the waiver of the requirement to return unearned Title IV funds if a student withdraws from a payment period during the COVID-19 crisis. Further, students who withdraw during the COVID-19 crisis will not be required to repay overpayments of Title IV funds provided for living expenses not included in institutional charges.

- Although ED may waive the return of funds arising from an R2T4 calculation, institutions are still obligated to withdraw students and perform refund calculations in accordance with their standard procedures in order to accurately report any unpaid refunds to ED in the future. Institutions still must pay refunds to students in accordance with their institutional refund policy and pay Title IV credit balances due to the student within 14 days.

### **FSEOG and Federal Work Study**

- The CARES Act relaxes rules for awarding and disbursing funds under the FSEOG and Federal Work-Study (FWS) program by eliminating the institutional 25% matching contribution to the FSEOG fund for award years 2019-2020 and 2020-2021; allowing institutions to move the entire unallocated (i.e., funds that are available, but not awarded) portion of FWS funds to the FSEOG program; and allowing those funds to be awarded as emergency aid to both undergraduate and graduate students who have experienced additional expenses as a result of the COVID-19 pandemic.
- Institutions may award such FSEOG emergency aid to students of up to \$6,195 for the 2019-2020 academic year. It is up to institutions to determine what funds remain unallocated in each program, and it is our recommendation that institutions develop an awarding strategy for emergency aid to students.
- Institutions may seek assistance from a scholarship-granting organization to aid in the application and awarding of the FSEOG emergency aid program. The CARES Act does not define what entities qualify under this provision and ED has not yet provided clarifying guidance. Note that if an institution has an existing relationship with a third-party servicer to provide for the award and disbursement of Title IV funds, the servicer may be able to assist in getting emergency funding to students quickly.
- We also recommend that institutions document the award of FSEOG emergency aid to students by producing a new award letter with each additional award and retain documentation of the criteria used to award FSEOG emergency aid.

### **Foreign institutions**

- While foreign institutions are barred from awarding federal student aid to students in distance education programs, the CARES Act authorizes such institutions to provide federal loans covering coursework offered via distance education during the period of a qualifying emergency, if such an emergency has been declared by the country in which the institution is located. Such authority continues for enrollment during period of the COVID-19 emergency and subsequent payment period.
- Title IV-eligible foreign institutions may also enter into a written arrangement with an eligible domestic institution to provide coursework to direct loan borrowers for the duration of the qualifying emergency and the following payment period.
- Foreign institutions utilizing either of these provisions for the 2019-2020 award year must report such activity to ED by June 30, 2020.

### **HBCUs and other minority-serving institutions**

- ED may waive specific requirements of grants available to HBCUs and other MSIs, including requirements that ED use the most recent and relevant data in making grant eligibility determinations and that institutions must wait two years following a five-year grant period before receiving an additional MSI grant.
- ED may waive requirements relating to allotment determinations, allotment restrictions and funding year rules for predominantly black institutions and HBCUs.
- ED may also waive or modify any other statutory or regulatory provision to ensure that formula calculations for specified time periods do not adversely affect HBCUs and other MSIs receiving assistance at the time of the COVID-19 pandemic.
- MSIs that did not expend or use the funds paid to them during the five-year period after they were initially disbursed to the institution may use them during the succeeding five-year period.

### **Authorized uses and other modifications for grants**

- The CARES Act also authorizes ED to waive or modify current allowable uses of funds so institutions can re-deploy resources and services to COVID-19 efforts have been secured through any of the following institutional grant programs:
  - Title III: Strengthening Institutions Program and Strengthening HBCUs Program
  - Title IV: TRIO and GEAR UP Programs
  - Title V: Developing Hispanic-Serving Institutions Program
  - Title VII: Master's degree programs at HBCUs and predominantly black institutions

We will continue to provide updates on [CooleyED](#).

**Rebecca Flake** focuses on federal student financial aid matters. She has been in the financial aid industry for 20+ years in the capacities of a financial aid advisor, financial aid director and compliance auditor.

**Shannon Noonan** focuses on assisting postsecondary institutions, K-12 schools and the companies that collaborate with them navigate complex regulatory issues.

**Caitlyn Shelby** advises postsecondary institutions, K-12 schools and education companies on matters involving accreditation, state authorization and the provision of online education, and monitors legislative and regulatory developments in these areas.

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