

ED Releases CARES Act Stimulus Funding for Emergency Student Grants, Subject to Institutional Certification

April 10, 2020

On April 9, the US Department of Education released the [Funding Certification and Agreement](#) and [expected allocations](#) for institutional funding under the [Higher Education Emergency Relief Fund of the CARES Act](#), which provides \$14 billion to institutions of higher education to provide student grants and cover institutional costs in response to the COVID-19 pandemic. In a conference call for higher education stakeholders yesterday, Education Secretary Betsy DeVos announced that ED will immediately release the portion of funding that is intended for emergency student grants, constituting half of each institution's award. DeVos confirmed that the remainder of the awards, which can be used to cover institutional costs, will be released at a later date still to be determined. The [full announcement](#) includes a letter from the secretary, the Certification and Agreement to be submitted prior to receiving funds and the methodology ED used to make funding allocations.

While it may be tempting to request funds as soon as possible, it is crucial that institutions understand and are prepared to meet the conditions associated with receiving funds under the CARES Act. Specifically, institutions are required to sign and submit the Certification and Agreement to ED, which imposes several important requirements on institutions both as prerequisites to receiving the grant and conditions as to how the funds will be used, disbursed and reported to ED going forward. These requirements are complex and will require institutions to quickly establish detailed procedures and recordkeeping processes.

While we are still analyzing the scope and impact of these conditions, our initial takeaways on ED's announcement are below. Importantly, we encourage institutions to carefully review the Certification and Agreement and consult counsel prior to submission. Like the Program Participation Agreement for the federal student aid programs, the Certification and Agreement imposes legal obligations that must be understood and carefully followed to avoid adverse consequences later on.

Use of emergency student grant funding

ED's announcement letter affirms that the CARES Act allows significant discretion to institutions on how to award emergency assistance to students, as long as the funds are intended to cover student expenses related to disruption of campus operations due to COVID-19. Examples of permissible uses include grants to cover student food, housing, course materials, healthcare and childcare and to secure technology, whether equipment or access (e.g., internet costs). An institution may *not* reimburse itself for refunds paid to students for room and board or tuition where students were sent home for the semester.

Institutions are expected to develop their own systems and processes for determining how to allocate funds, which must document their use of the funding by identifying how grants were distributed to students, the amount of each grant award provided to each student, how the amount of each grant was calculated and any instructions or directions given to students about the grants. In addition, institutions must document in detail that they continued to pay employees and contractors to the greatest extent practicable during the period of disruption, which is a requirement directly from the CARES Act. The form of this reporting is not specified in the April 9 announcement, but there could be further guidance from ED down the road.

ED indicated that institutions may choose to distribute funds to all students or only to students the institution determines demonstrate significant need. However, ED's announcement letter encourages – but stops short of requiring – institutions to prioritize students with the greatest need and suggests institutions consider a maximum funding threshold for each student to ensure funds are distributed as widely as possible. Both in its announcement letter and in its Certification and Agreement (discussed below), ED strongly suggests, but currently does not require, that institutions use the maximum Pell Grant award (\$6,195 for award year 2019-2020) as the maximum per-student award.

Certification and Agreement

The [Certification and Agreement](#) must be signed and returned before an institution can access funds. In addition to agreeing to certain specified uses and reporting requirements, the Certification and Agreement includes terms common

for federal grant recipients. While some of these terms are similar to those contained in the institution's PPA, others are unique to this emergency aid program. Failure to comply with the terms and conditions of the Certification and Agreement could result in institutional accountability or penalties, including the liability under the False Claims Act referenced on the Certification and Agreement.

It is also important to note that while ED is suggesting that institutions will be afforded significant discretion in using and allocating student grant funding, the Certification and Agreement imposes strict accountability and significant potential penalties for running afoul of the permitted uses and ED's related guidance. While ED's announcement letter makes several recommendations that don't appear to be requirements, particularly with respect to focusing on the neediest students and capping grants at the maximum Pell Grant award, we urge institutions to document their justification for straying from these recommendations.

Overall, every institution should treat the accountability expectations embedded in the Certification and Agreement as they would those in the PPA, making it important to carefully develop and document its processes for awarding grants to ensure consistency with the CARES Act.

Funding allocations

ED also released a listing of anticipated institutional [funding allocations](#). ED included a description of the methodology used to allocate funds, noting limitations with the data and resulting allocations. In a welcome demonstration of transparency, ED acknowledged that the calculations are approximations using the best available data from the Integrated Postsecondary Education Data System and Federal Student Aid systems, which do not necessarily contain the same information covering the same period of time. Notably, IPEDS data (from which ED approximated enrollment numbers) always lags a year or two, and the latest available data is from 2017-2018. That means that schools new to Title IV participation, among others, may have been excluded and will be later paid out of \$50 million set aside to provide subsequent awards as corrections are made.

We will be closely monitoring ED guidance on its implementation of those components of the CARES Act that are relevant to the education sector. Follow [CooleyED](#) for the latest updates.

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