

# ED Releases Institutional Funding from CARES Act + Clarifies Student Grant Requirements

April 22, 2020

On April 21, the US Education Department announced the release of the [remaining \\$6 billion of stimulus funding](#) under the CARES Act's Higher Education Emergency Relief Fund. Unlike the first \$6 billion that ED released on April 9, which can only be used for emergency student grants, this second release of money is intended to help institutions with COVID-19-related costs. The announcement included [an FAQ on the institutional funding](#) and [another student funding FAQ](#) clarifying the use and management of the HEERF emergency student aid.

Although nearly half of schools have already signed and submitted the Certification and Agreement necessary to access the emergency student grant funds and some of the student grant funding has already been released to institutions, ED's April 21 FAQ provides important additional limitations with respect to the permissible use and distribution of emergency student funds that were not expressly included in prior announcements. Schools should review the FAQ carefully prior to disbursing funds to students or issuing further communications to students regarding how funds will be disbursed.

These announcements were released following a call among ED officials and higher education stakeholders. During the call, Education Secretary Betsy DeVos also encouraged institutions to use their institutional share to enhance remote learning, build out technology for remote learning and train faculty and staff to operate effectively in a remote learning environment. She also encouraged institutions to provide additional emergency grants to students to the maximum extent possible, including reallocating funds from the institutional share if they are able to do so.

Here are the highlights from yesterday's announcements.

## Additional limitations on student emergency grants

- **Only Title IV-eligible students may receive emergency student grants under the CARES Act.** Although not stated in the CARES Act, ED's position is that only students who are, or who could be, eligible for federal student aid funding under the Higher Education Act may receive emergency grant funding. The basic student eligibility criteria include US citizenship or permanent resident status *and* enrollment in a Title IV-eligible program. For this reason, the Title IV eligibility requirement appears to exclude international and undocumented students from receiving emergency student grants. Note also that because students must be enrolled in a Title IV-eligible program, students enrolled in short courses are not eligible to receive HEERF-funded emergency grants. Institutions are expected to make reasonable efforts to determine Title IV eligibility for students who have not completed a Free Application for Federal Student Aid (FAFSA), but may rely on a student affirmation for the more complicated aspects of eligibility, such as Selective Service registration, drug convictions and loan defaults.
- **Students in 100% online programs as of March 13 may not receive grants.** ED has clarified that students enrolled exclusively in distance education courses prior to or on March 13 (i.e., the date of the national emergency declaration) are not eligible for CARES Act grants. ED's position is based on two requirements in the CARES Act: (1) funds were allocated to institutions based on the on-ground student population, and (2) the CARES Act grants are intended to cover expenses "related to the disruption of campus operations" due to coronavirus. ED's view is that 100% online students did not have a campus disruption and therefore could not have expenses related to such a disruption. Students enrolled in hybrid or low-residency programs appear to be eligible for emergency grants if their campus component was disrupted.
- **Institutions cannot use student emergency grants to pay outstanding student balances or as an advance payment for future tuition.** ED has been clear that the entirety of the student grant must go to students and must be unencumbered by institutional fees or costs. Yesterday's FAQ affirms that institutions cannot use the student grant portion to satisfy a student's account balance, nor can institutions that provided technology or equipment to students reimburse themselves for those costs. As long as the full amount of the grant goes to the student, a student may still voluntarily choose to pay his or her institutional obligations. It is also not permissible for institutions to reimburse themselves for wages paid to student workers.
- **Institutions can reimburse themselves for certain institutionally funded student grants made on or after March 27, if those grants were for expenses authorized under the CARES Act (i.e., advanced funds).** If an institution made emergency financial aid grants to students after the enactment of the CARES Act, but before it received funds from ED, it may reimburse itself for those grants. Only grants for authorized expenses and eligible

students (i.e., Title IV-eligible students enrolled in on-ground Title IV programs) under the CARES Act can be reimbursed.

### Newly released institutional cost funding

- **To draw down the institutional funding, institutions must submit a *second* institutional certification form.** In addition, because a primary goal of the CARES Act is to support students, institutions *cannot* draw down the institutional share without having previously drawn down the student share.
- **Costs must have a clear nexus to significant changes to the delivery of instruction due to COVID-19.** While the institution retains discretion in the use of the allocated funds, ED's certification agreement requires that the funds be spent only on those costs for which the institution "has a reasoned basis for concluding such costs have a clear nexus to significant changes to the delivery of instruction due to the coronavirus."
- **All costs must have been first incurred on or after March 13.** This is the date of the national emergency declaration, and costs before that date are not reimbursable.
- **Institutions can reimburse themselves for refunds.** Unlike the student grant share of the HEERF, institutions can use the institutional portion of the funding to reimburse themselves for refunds of room and board, tuition and fees, food or other services the institution could no longer provide, as well as for hardware, software or internet access the institution may have secured for students. Like the emergency student grants, the institutional funds *cannot* be used to pay down prior student balances.
- **No payments for recruiting or marketing services.** As previously reported, the CARES Act specifically prohibits the use of HEERF grant funding to cover pre-enrollment recruitment activities, including marketing and advertising. ED's guidance clarifies that institutions may use HEERF to pay a *per-student* fee to an OPM or other third-party provider for each additional student moved to a distance learning platform, learning management system or other related online resources in response to COVID-19. But institutions that partner with third parties on a tuition share-basis for a bundle of services that includes recruiting and marketing need to carefully evaluate their payment structures to ensure they can properly apply HEERF funds to cover the cost of moving existing students to online platforms, particularly as institutions weigh remaining online through the fall.
- **No payments to senior administrators or executives.** HEERF funding cannot be used to benefit a senior administrator or executive, including payment of salaries, benefits, bonuses, contracts, incentives, stock buybacks, shareholder dividends, capital distributions or stock options.

### Next steps

Even with two sets of FAQs, ED has still not provided clarity on the CARES Act requirement that institutions must continue to pay employees and contractors "to the greatest extent practicable," other than to note that the funding earmarked for student grants should not be used to pay employees or contractors. It is still unclear how this will be measured or reviewed, or how this requirement may apply to institutions that furloughed or terminated employees prior to the enactment of the CARES Act.

Expect further information on reporting requirements, which may impact how institutions document and support their use and disbursement of funds. ED has said it plans to publish a notice in the Federal Register with further instructions on reporting requirements. Watch this space for latest developments.

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