

US Department of Education Issues Long-Awaited Guidance on CARES Act HEERF Reporting

October 8, 2020

Since the CARES Act created the Higher Education Emergency Relief Fund (HEERF) in April 2020, institutions have faced an ever-changing landscape of new and shifting guidance. We posted a number of articles over the past few months ([here](#), [here](#), [here](#), [here](#), [here](#), and [here](#)) addressing the seemingly endless clarifications and amendments to the Department of Education's guidance on the HEERF. Among the issues subject to continued update and clarification by ED is the process for reporting how HEERF funds have been distributed or used by the institution. Below we recap previous guidance from ED, as well as the newest updates focused on the institutional portion of the HEERF.

Reporting HEERF Student Emergency Grant Funds

As set forth in the HEERF [Funding Certification and Agreement](#), institutions that accept the HEERF grant funds must comply with a reporting process. For student emergency grants, institutions must report "how grants were distributed to students, the amount of each grant awarded to each student, how the amount of each grant was calculated, and any instructions or directions given to students about the grants."

The assumption based on the Certification was that institutions would use an ED provided platform to report the required data to ED. Instead, ED published an [Electronic Announcement](#) on May 6 clarifying that, "each HEERF participating institution must post the information on the institution's primary website" and "in a format and location that is easily accessible to the public 30 days after the date when the institution received its allocation under 18004(a)(1) and updated every 45 days thereafter."

That May guidance was then amended again on August 31 through a [Federal Register notice](#). The notice maintained the initial 30 day report requirement, but eliminated the 45 day update requirement. Instead, the notice advised institutions to report the required data no later than 10 days after the end of each calendar quarter. Based on this timeline, the next report will be due October 10 and should include all distributions to students made through September 30. Institutions will continue to post this report on the institution's primary website and not submit it directly to ED.

Finally, in [guidance](#) issued by the Department of Education on October 2 (which is discussed in more detail in the following section), ED clarified that for institutions that made distributions of student emergency grants to students who were not eligible for Title IV aid prior to ED's June 17 [Interim Final Rule](#) (IFR), which codified the limitation on distribution to only eligible students, ED will not take enforcement action. Institutions should maintain distribution date records to document that the determination of awards to non-Title IV eligible students occurred before the issuance of ED's IFR.

Acceptable Uses of HEERF Institutional Funds

The institutional portion of the HEERF grant has been subject to even more baffling (or confusingly imprecise) guidance from ED presentations and IRS guidance. Some of this confusion can be attributed to the fact that there are multiple forms of institutional funds under the HEERF grant – and those funds awarded to the majority of higher education institutions under §18004(a)(1) have a more narrow set of acceptable uses than those applicable to institutions covered under §18004(a)(2) and (3). For months, institutions have submitted questions to ED (and to Cooley) asking how they can spend their institutional portion in a compliant manner, and finally, on October 2, ED provided some [additional guidance](#).

Based on the questions we have received, the following appear to be the most instructive parts of ED's October 2 FAQ:

- Purchases to ensure the physical safety of students on campus is an allowable use of the institutional portion of the funds under §18004(a)(1) of the CARES Act, when these costs are new or added and needed to implement "significant changes to the delivery of instruction due to the coronavirus." This may include the reasonable costs of cleaning supplies, facility cleaning or the purchase of items to help detect or prevent the spread of COVID-19 (e.g., thermometers, plastic barriers or face masks). (*Question 1*)

- Institutional funds may also be used to make nonpermanent changes to existing facilities to ensure social distancing. (*Question 1*)
- Institutional funds under §18004(a)(1) **cannot be used to simply defray revenue losses**. Rather, the institution must use these funds to pay expenses created as a result of “significant changes to the delivery of instruction due to the coronavirus” under 18004(c). (*Question 11*)
- Institutions that received funds under either section §18004(a)(2) or §18004(a)(3) (which generally includes HBCU and minority-serving institutions) may use those allocations for the purpose of defraying expenses, including lost revenue. These institutions must document any offsets in lost revenue by comparing year-to-year revenue and describing how the shortfall in tuition is impacting the institution’s budget. The institution must also track how these funds were spent and report those uses accurately in its required quarterly and annual reports. (*Question 11*)
- Institutional funds can be used to establish or expand a paid time off (PTO) buyback program for affected employees, if due to “significant changes to the delivery of instruction due to the coronavirus,” an institution anticipates that instructional staff may not have the ability to utilize vacation days or PTO because their services are needed in order to implement the applicable “significant changes” to serve their student community. (Note that ED only mentioned instructional staff and not administrative staff in this guidance. It is unclear if that was intentional, but institutions should thoughtfully assess whether administrative employees can be included based on this clarification.) (*Question 6*)
- An institution may use institutional funds to purchase equipment or software, pay for online licensing fees or pay for internet service to enable students to transition to distance learning as such costs are associated with a significant change in the delivery of instruction due to the coronavirus. (*Question 10*)
- Institutional funds can also be used for any other costs for computer system upgrades that are reasonably related to “significant changes to the delivery of instruction due to the coronavirus.” This would not include, for example, previously planned upgrades to computer systems. (*Question 10*)
- Institutional funds can be used to hire additional personnel when those personnel costs are new or added to respond to “significant changes to the delivery of instruction due to the coronavirus.” If an employee’s duties are only partially to address or respond to “significant changes to the delivery of instruction due to the coronavirus,” the institution may use HEERF funds for only the pro-rated share of hours or effort that employee spends to respond to coronavirus. Note that ED would not consider senior administrator and/or executive personnel costs to meet this standard. (*Questions 14 and 16*)

Reporting HEERF Institutional Funds

The [Funding Certification and Agreement](#) also imposes reporting obligations for the institutional portion of the HEERF funds.

On July 29, ED published a [Federal Register notice](#), requesting input regarding the collection and reporting of information relating to the HEERF institutional funds. And more recently, on September 23, ED issued a notice to HEERF recipients, via [email](#), that included some additional clarifications regarding reporting, and reminded recipients about the deadline to [provide feedback](#) on the July 29 Notice. The September 23 email also included a [draft reporting form](#).

Although the July 29 Notice indicates reporting will be required annually and provides an annual reporting schedule, the draft reporting form circulated in September follows the quarterly reporting timeline noted in the Certification and Agreement (and also aligns with the quarterly reporting timeline for the student grant portion). Because ED has not finalized the reporting form for institutional funds, the first quarterly reporting deadline for institutional funds is October 30 rather than October 10, but will include all expenditures through September 30.

Although the draft reporting form is not finalized, and have already heard that ED intends to make edits before publishing it, the form provides institutions an idea of what data to collect and how to organize such data for the purpose of complying with this requirement. Note that some of the guidance provided on October 2 and discussed above seems to conflict with what is in the draft form, which we presume ED will address in the final reporting form document. And as is the case with the student grant portion of the fund, rather than reporting the institutional data directly to ED, institutions are required to post the completed form to their website in the same location where the current student emergency grant information is published.

Finally, ED recently created a [webpage](#) specifically devoted to the reporting requirements for the HEERF, both institutional and student funds which, helpfully, collects all the reporting notices into one link.

ED will also be conducting a training webinar on these topics on Wednesday, October 14, from 2:00 pm to 3:30 pm eastern time. The webinar can be accessed by using this [link](#).

If you have any questions about the HEERF grant program, please reach out to us for assistance.

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