

U.S. Department of Education releases first set of materials related to the CARES Act's Higher Education Emergency Relief Fund

April 10, 2020

On April 9, the U.S. Department of Education (ED) released information and guidance related to the Higher Education Emergency Relief Fund (HEERF), the approximately \$14 billion fund created under the Coronavirus Aid, Relief and Economic Stability (CARES) Act to provide funds to colleges and universities and their students. The material is posted on ED's [website](#). This memorandum briefly describes pertinent provisions of the CARES Act and key aspects of the ED's April 9 release.

CARES Act

CARES Act Section 18004(a) creates the HEERF and authorizes ED to allocate funding to institutions in accordance with three different allocation formulas. The allocation pertinent to the ED's April 9 release is the allocation described in CARES Act Section 18004(a)(1), which provides that 90 percent of HEERF monies will be allocated as direct grants to institutions in accordance with an enrollment-based formula. The specific formula is as follows: (A) 75 percent according to the relative share of full-time equivalent enrollment of Federal Pell Grant recipients who are not exclusively enrolled in distance education courses prior to the coronavirus emergency and (B) 25 percent according to the relative share of full-time equivalent enrollment of students who were not Federal Pell Grant recipients who are not exclusively enrolled in distance education courses prior to the coronavirus emergency. As part of its April 9 release, ED has posted a [chart](#) that identifies the total amount each institution will receive from HEERF based on the allocation formula, and it has posted an [explanation](#) of its calculations.

CARES Act Section 18004(c) describes how HEERF funds are to be used. There are two buckets of uses:

- 1) Recipient institutions “shall use no less than 50 percent of [HEERF funds] to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to coronavirus (including eligible expenses under a student’s cost of attendance, such as food, housing, course materials, technology, health care, and child care).”
- 2) With respect to funds not used in connection with (1), recipient institutions “may use the funds received to cover any costs associated with significant changes to the delivery of

instruction due to the coronavirus, so long as such costs do not include payment to contractors for the provision of pre-enrollment recruitment activities; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship.”

April 9 release

ED's April 9 release focuses on the first bucket above, namely emergency financial aid grants to students. The allocation chart identifies for each institution the minimum amount to be awarded for emergency financial aid grants to students. In order to access the funds for such grants, an institution must sign a [Funding Certification and Agreement](#) (Certification). The institution must transmit the signed Certification to ED through [grants.gov](#). The Certification sets forth terms and conditions of the funding. After ED has received an institution's Certification, the institution may draw down the funding using ED's G5 system, which is the system used to draw down federal student financial aid funds. In a stakeholders call on April 9, Principal Deputy Under Secretary Diane Jones said that ED may have funds available for draw as early as Wednesday, April 15. After that, ED expects an institution will be able to draw down funds within 24 -72 hours after submittal of the Certification.

Here are selected aspects of the April 9 release:

- In a cover letter, Secretary Betsy DeVos explains that “[t]he CARES Act provides institutions with significant discretion on how to award this emergency assistance to students. This means that each institution may develop its own system and process for determining how to allocate these funds, which may include distributing the funds to all students or only to students who demonstrate significant need.”
- Nevertheless, ED's materials emphasize the statutory requirement described above. The Certification states that funds shall be used “for the sole and exclusive purpose of providing emergency financial aid grants to students for their expenses related to the disruption of campus operations due to coronavirus, such as food, housing, course materials, technology, health care, and child-care expenses.” The Certification states that a recipient “shall not use the advanced funds to reimburse itself for any costs or expenses, including but not limited to any costs associated with significant changes to the delivery of instruction due to the coronavirus and/or any refunds or other benefits that Recipient previously issued to students.”
- Other notable aspects of the Certification are as follows:
 - A recipient must promptly and to the greatest extent practicable distribute all advanced funds in the form of emergency financial aid grants to students by one year from the date of the Certification.
 - A recipient retains discretion to determine the amount of each grant consistent with all applicable laws, including non-discrimination laws. The recommends the maximum Federal Pell Grant for the applicable award year as an appropriate maximum amount for a grant in most cases, and the Certification directs recipients to be mindful of each student's particular socioeconomic circumstances in the staging and administration of grants.
 - The Secretary does not consider HEERF emergency financial aid grants to students to constitute federal student financial aid under Title IV of the Higher

Education, and the grants are not to be included in a student's need analysis for Title IV aid.

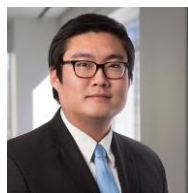
- A recipient must report to the Secretary thirty days after the date of the Certification and every 45 days thereafter how grants were distributed to students, the amount of each grant awarded to each student, how the amount of each grant was calculated, and any instructions or directions given to students about the grants. ED plans to issue additional guidance regarding required reports.
- A recipient must document that it has continued to pay all of its employees and contractors during the period of any disruptions or closures to the greatest extent practicable, explaining in detail all specific actions and related decisions, in compliance with CARES Act Section 18006.
- The Certification identifies a number of laws with which a recipient must comply, and it specifically flags that failure to comply with the Certification, its terms and conditions, and all relevant provisions and requirements of the CARES Act or any other applicable law may result in liability under the False Claims Act, 31 U.S.C. § 3729 et seq., and government debarment and suspension rules.

We are available to respond to questions.

Contacts



Stephanie J. Gold
Partner, Washington, D.C.
T +1 202 367 5496
stephanie.gold@hoganlovells.com



Ray Li
Associate, Washington, D.C.
T +1 202 637 4858
ray.li@hoganlovells.com

www.hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members. For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.

© Hogan Lovells 2020. All rights reserved.