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CARES Act and the Higher Education Industry: Key Takeaways

SUMMARY

Recognizing that there has been a flood of information regarding the allowable uses of the estimated \$2 trillion provided under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, this alert summarizes those portions that Institutes of Higher Education (IHEs) can use right now to help them cope with the immediate effects of COVID-19 pandemic. Where appropriate, we have also highlighted certain limitations, restrictions, and/or process-related gaps within the current Act.

CARES Act Provisions Impacting Student Borrowers

Effect on Students' Eligibility to Receive Future Federal Student Loans and Pell Grants: For purposes of Title IV funding, any semester that a "student does not complete due to a qualifying emergency" (i.e. a public health emergency related to COVID-19 as declared by the Secretary of Health and Human Services or a major disaster or national emergency declared by the President of the United States) does not count toward a student's lifetime eligibility for subsidized student loans or, separately, a student's lifetime eligibility to receive a Pell Grant.

Non-Repayment of Federal Funds Due to Withdrawal Because of Qualifying Emergency: If a student withdraws from an institution due to a "qualifying emergency," such as COVID-19, that student does not need to return money received via a federal student loan, a Pell Grant, or "other grant assistance."

Academic Progress: Any credits that were "attempted" by a student but "were not completed" by that student as a result of a qualifying emergency may be excluded from calculating whether "a student is maintaining satisfactory academic progress." As a result, the noncompletion of credits due to a qualifying emergency will not adversely affect the student's eligibility to receive federal student loans or federal grants, including Pell Grants.

Deferral of Federal Student-Loan Payments: Any borrower with federal student-loan payments due will have those payments deferred, without penalty, until September 30, 2020. During that deferral period, no interest will accrue, and the Secretary of Education will "deem each month for which a loan payment was suspended . . . as if the borrower of the loan had made a payment for purposes any loan forgiveness program or loan rehabilitation program . . . for which the borrower would have otherwise qualified." Similarly, for purposes of reporting to consumer-reporting agencies, "any payment that has been suspended is treated as if it were a regularly scheduled payment made by a borrower." In other words, all efforts by the U.S. Department of Education to collect on any federal student loan - **including wage garnishment, reducing tax refunds, reducing any other federal benefit, or taking any "other involuntary collection activity"** - is suspended during the deferral of federal student-loan payments.

Moreover, beginning on August 01, 2020, the Secretary of Education will issue "not less than 6 notices by postal mail, telephone, or electronic communication to borrowers," indicating "when the borrower's normal payment obligations will resume" and "that the borrower has the option to enroll in income-driven repayment, including a brief description of such options."

Stabilization Fund Issues Impacting Institutes of Higher Education

Under the CARES Act, \$30.75 billion is allotted to the **Department of Education's Education Stabilization Fund** to allow for: (1) emergency support of local school systems and IHEs so that they may continue to provide educational services to students; and (2) ongoing educational operations. The Fund provides approximately \$14.3 billion to institutions of higher education; K-12 schools will receive about \$13.5 billion.

Allocation of Funds for IHEs: Section 18004 of the Act establishes that, of the roughly \$14.3 billion allotted for emergency relief:

- 90 percent will be allotted to IHEs, and apportioned upon a formula that is predicated upon Federal Pell Grant allocation (and on-campus student learning):
 - 75 percent according to the number of federal Pell Grant recipients *not exclusively enrolled in online learning*;
 - 25 percent according to the number of non-Pell Grant recipients *not exclusively enrolled in online learning*.
- 7.5 percent will be allotted to Minority-Serving IHEs in "additional awards," under Titles III, V, and VII of the Higher Education Act, to "defray expenses" and "address needs directly related to coronavirus that shall be in addition to" the awards noted above.
 - Such expenses and needs include "lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty/staff trainings, and payroll," and grants to students for "any component of the student's cost of attendance," including "food, housing, course materials, technology, health care, and child care."
- 2.5 percent for those IHEs that the Secretary determines to have the "greatest unmet need" related to COVID-19. But, the Act provides no details as to how such a determination is to be made, and/or communicated.
 - This money may be used to defray expenses related to COVID-19, such as, "lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty/staff trainings, and payroll," and for grants to students for "any component of the student's cost of attendance," including "food, housing, course materials, technology, health care, and child care."
 - Priority will be given to IHEs not eligible for at least \$500,000 under the 90 percent funding allocation, or the 7.5 percent funding allocation, outlined above, that is able to "demonstrate significant unmet needs related to expenses associated with coronavirus." But no details as to what proof IHEs will be required to provide, or what the threshold will be, have been provided.
- In addition to the above, the Education Stabilization Fund makes \$100,000,000 available to domestic and international K-12 and post-secondary schools, supplementing the funds made available under Project SERV, to assist with the costs associated with cleaning and disinfecting school buildings, counseling, distance learning, and other costs related to COVID-19. Said funding will be made available through September 30, 2021.
- A "Special Provision" of the Stabilization Fund allows Historically Black Colleges and Universities (HBCUs) and other Minority Serving Institutions (MSIs) to use funding allotted in prior awards under Titles III, V, and VII of the HEA to prevent, prepare for, and respond to COVID-19.
- \$69 million will be made available to tribal schools, colleges, and universities through the Bureau of Indian Education.
- The Act makes additional monies available to Gallaudet University, Howard University, and "Student Aid Administrations."
- All of the funds outlined above will be distributed by the Secretary through the same processes currently used for HEA Title IV disbursements.
- None of the funds outlined above may be used to pay for contractors engaged in pre-enrollment recruiting, endowments, or certain types of capital outlays "associated with athletics, sectarian instruction, or religious worship."
- The rest of the funds – about 10 percent or \$3 billion – will go to Governors for emergency education costs.

Additional General Information

Waivers Of, or Modifications To, Uses for Grant Funds Allowable: The Secretary of Education may waive or modify what have been traditionally deemed the allowable or required uses of funds for institutional grant programs – including non-federal matching requirements – thereby, allowing IHEs greater latitude to use those monies as they see fit. But such a modification could only come about upon an institution's request, and the package provides no details as to how, or to whom, such a request is to be made, or how such a request will be decided.

Treatment of Withdrawals: The Secretary of Education may waive the requirement for return of Title IV federal student aid if the student withdraws due to the COVID-19 emergency. This means that the IHE will not be required to calculate the amount of grant or loan assistance that the IHE would have had to otherwise return to the Department. The IHE will, however, be required to report to the Secretary, *inter alia*, the total amount of grant or loan assistance received but not returned. But the package provides no details to how, or when, the IHE will be required to make such a report.

Paying Work-Study Students: IHEs *can* pay students who were enrolled in work study programs if those students are currently unable to work due to COVID-19-related work-place closures. But the amount of the payment (which can be a one-time grant or multiple disbursements) is based on the student's scheduled FWS hours, not the average hours worked previously. Relatedly, the CARES Act waives the requirement that IHEs pay a matching share of FWS program wages in 2019-20 and 2020-21.

Using FSEOG for Emergency Aid: IHEs *can* use Supplemental Educational Opportunity Grants for emergency financial aid (to assist undergraduate and graduate students with *unexpected expenses* and *unmet financial need* due to COVID-19). But note that the amount of emergency aid per student is capped at the amount of the maximum Federal Pell Grant for the applicable award year. Relatedly, the CARES Act waives the requirement that IHEs pay a matching share of FSEOG in 2019-20 and 2020-21.

HBCUs: The Secretary of Education may defer payments (and interest) on current HBCU Capital Financing loans during the national emergency period so that the HBCUs can devote financial resources to COVID-19 efforts. But note that, after the original loan is repaid, the HBCU will be required to repay any portions that were covered by the Department, and no details as to the timetable for that repayment have yet been provided.

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