

What Educational Institutions Need to Know about the CARES Act

Monday, March 30, 2020

Overview

On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“[CARES Act](#)”), the third and by far the largest stimulus package passed by Congress to respond to the COVID-19 outbreak. As discussed in our [main alert](#), the \$2 trillion CARES Act amounts to what will be the biggest economic stimulus package in American history.

For educational institutions, the Act offers a combination of financial assistance and legislative changes designed to blunt the devastating effects of COVID-19 on the education system. In specific, the Act creates a \$30.9 billion Education Stabilization Fund to be distributed directly to states, local school districts, and institutions of higher education. The Act allows private educational institutions (including private elementary and secondary schools) to receive some funding.

The Act also includes a variety of provisions designed to ease the pressure on higher education institutions and students, including a suspension of federally-held student loan payments through September, several waivers designed to provide colleges with additional flexibility under federal law as they move operations online, and broad authority to the Secretary of Education Secretary to waive standardized testing and other requirements.

Finally, for nonprofits with fewer than 500 employees (including elementary schools, secondary schools, and higher education institutions), the Act’s paycheck protection program allots approximately \$350 billion to help small businesses, including nonprofits, maintain their payrolls for eight weeks. The legislation authorizes the Small Business Administration to provide businesses with fewer than 500 employees loans of up to \$10 million per business to cover payroll and other authorized expenses, including mortgage interest, rent expenses, and utilities. The Government will forgive the loans for businesses that maintain their payroll and only use the funds to cover authorized expenses. The program is available until June 30, 2020.

Key Points

Who's Getting the Money?

- **States and School Districts.** \$13.5 billion in formula funding will go directly to states based on how much money they receive through Title I. States must distribute at least 90% of the funds to school districts and charter schools, and can reserve up to 10% of funds for emergency needs as determined by the state.

Notably, private schools (termed “non-public schools” in the Act, and defined as a non-public elementary and secondary school that is accredited, licensed, or otherwise operates in accordance with State law, which existed prior to the state of emergency), are also eligible. The local educational agency receiving grant funds under the Act must provide students and teachers at non-public schools with “equitable services in the same manner” as under Section 1117 of Title IA, which provides financial assistance to qualifying private schools with a high percentages of children from low-income families. The Act directs local education agencies to consult with representatives of non-public schools to coordinate the scope of these services.

- **Governors.** \$3 billion in flexible formula funding for state governors to allocate at their discretion.
- **Higher Education.** \$14.25 billion directly to higher education institutions, with priority given to schools with a high number of Pell Grant recipients, excluding students who were exclusively enrolled online before the crisis.

What Can They Spend It On?

- **School Districts and Charter Schools.** Schools may use their portion for a wide variety of coronavirus-related activities, such as coordinating long-term school closures; purchasing educational technology to support online learning for students; efforts to help low-income students, homeless students, English learners, students with disabilities, and students of color; purchasing cleaning supplies to sanitize buildings; and additional activities authorized by federal elementary and secondary education laws.
- **Governors.** Governors may choose between school districts deemed “most significantly impacted by coronavirus,” colleges and universities, or any other school district or “education related entity,” including those providing child care and early childhood education.

- **Higher Education.** At least 50% of funds must be used to provide emergency financial aid grants to students to cover certain eligible expenses under a student's cost of attendance, such as food, housing, course materials, technology, health care and child care. The other 50% may be used to account for things like lost revenue and technology costs associated with the shift to online learning.

What About Federal Student Loans, Grants, and Work-Study?

All federal student loan payments are suspended through September 30, 2020, during which time no interest will accrue. The suspension will have no reflection on a student's credit, as it will be reported to consumer reporting agencies as if the student had been making regular payments. All involuntary collection for student debt is also suspended, including wage garnishing and reductions in tax refunds.

The Act lets students keep their Pell grants, as well as any unspent money from Pell grants or student loans. The Act also allows schools to continue paying work-study students who are unable to fulfill their obligations due to the COVID-19 crisis, and excludes COVID-19-disrupted semesters from students' federal Pell Grant limits and consideration for subsidized loans.

Additionally, as part of the \$5,250 in tax-free educational assistance benefits employers may provide to employees under current law, employers may now provide as a tax-free benefit student loan repayment assistance.

What Other Relief is Available for Colleges and Universities?

The Act includes a variety of provisions designed to give higher education institutions increased flexibility and ease some of the financial burden of the COVID-19 crisis, including:

- Waiver of non-federal share requirements for Title IV work-study and supplemental educational opportunity grants awarded in 2019-20 and 2020-21;
- Allowing the use of Supplemental Educational Opportunity Grant funds for emergency financial aid awards to undergraduate and graduate students for unexpected expenses as a result of the emergency.
- Allowing institutions to exclude from the calculation of "satisfactory progress" for Title IV purposes course credits attempted but not completed as a result of the emergency.
- Allowing non-US institutions to offer distance education for the duration of the COVID-19 emergency for Title IV purpose, if the emergency is declared by the foreign institution's government.

There is also additional funding in the Act for historically black colleges and universities, tribal colleges and universities, and other minority-serving institutions, including \$13 million to Howard University, and \$7 million to Gallaudet University.

Looking Ahead

While the package of financial funding and legislative changes will be welcomed by educational institutions that are struggling to adjust in the short term, it remains possible that additional federal funding and relief efforts will be necessary to support schools and students as the crisis progresses. It remains to be seen whether Congress will need to pass additional relief to assist the education sector in the months to come.

Foley Hoag has formed a firm-wide, multi-disciplinary [task force](#) dedicated to client matters related to the novel coronavirus (COVID-19). For more guidance on your COVID-19 issues, visit our [Resource Page](#) or contact your Foley Hoag attorney. For guidance on CARES Act education issues, please contact [Tad Heuer](#), [Rachel Hutchinson](#), or [Dean Richlin](#).