

What Higher Education Institutions Need to Know About Student Refunds

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It's been a month since colleges began sending students home due to the COVID-19 crisis, but many are still struggling with how to address the potential for refunds of tuition, room, and board. Most schools are offering partial refunds for housing, meals, and facility fees, but not for tuition (since many classes remain available online). Even so, the question of when—and how much—to reimburse students remains an elusive target. These decisions are complicated by the fact that for many schools, room and board charges make up a significant portion of the campus budget. Deciding to provide even partial refunds will have far-reaching implications for this year's budgets and those that follow.

Further complicating matters is the fact that many state attorneys general, Massachusetts' Maura Healey included, are carefully monitoring the situation. In particular, Attorney General Healey has [encouraged](#) students who encounter "issues" with their refund requests to file a consumer complaint. But what type of behavior AG Healey's office would consider to be an "issue" remains unclear—Too small a refund? A delay in providing refunds? Offering credit against future years? While some states [have begun to provide guidance](#) on how schools should address student refunds, Massachusetts has yet to follow suit.

In some states, proposals for partial refunds have been met with resistance from students. In Arizona, students filed a [class action lawsuit](#) against the governing board of Arizona's public universities, seeking to receive prorated refunds for room, board, and student fees. The universities at issue are already [offering partial refunds](#)—one is giving students an option between a 10 percent refund or a 20 percent credit, another is providing a 25 percent credit, and the third is offering a flat \$1,500 credit—but students argue it isn't enough. They are suing for breach of contract, unjust enrichment, and conversion.

New funding in the recently-passed Coronavirus Aid, Relief and Economic Security Act ("[CARES Act](#)") may provide schools with the means to offer more relief to students. As we [reported last week](#), the CARES Act provides \$14.25 billion directly to higher education institutions. The Act instructs institutions to allocate their shares of these funds as follows:

[A]n institution of higher education receiving funds under this section 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. Institutions of higher education shall use no less than 50 percent of such 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).

In other words, an institution must give at least 50 percent of the funds it receives directly to students in the form of financial aid. The remaining 50 percent can be used more broadly, to cover any costs associated with the shift to online education and other delivery of instruction expenses (with the above noted limitations). Many school expenditures will fall into both categories. For example, grants to students for technology assistance like webcams is both financial aid *and* a cost associated with the shift to online learning.

Schools should evaluate which expenses could fall in either category, as it allows for greater flexibility in allocating funds. It is unlikely that a school's needs will split 50/50 between student aid and instruction-related costs, so an ability to reclassify certain expenses as one or the other is helpful.

It remains to be seen whether Massachusetts and other states will publish clearer guidance related to student refunds now that the CARES Act has provided schools with additional funds. We will keep an eye on future developments.

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.

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