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WASHINGTON UPDATE

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House Democrats Take Up Next Coronavirus Relief Package

On May 12, 2020, House Democrats released the next coronavirus relief package, H.R. 6800, titled the *Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act,* the fourth legislative package geared toward addressing the COVID-19 crisis. The $3 trillion bill directs more than $37 billion to higher education institutions. The HEROES Act would establish a $90 billion for a State Fiscal Stabilization Fund, 30 percent or $27 billion must go to public institutions and will be distributed to the governors. Another $10.15 billion will go directly to institutions, including $1.7 billion for Minority-Serving Institutions, $7 billion for private nonprofit institutions, and $1.4 billion for pubic and nonprofit institutions with unmet need, including those that operate 100 percent online.

Other provisions include:

- The bill would prohibit the Secretary from imposing any student eligibility restrictions on the Higher Education Emergency Relief Fund (HEERF), which would be retroactive to March 27, 2020. The bill also clarifies that the 1996 welfare reform bill, the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996,* does not apply. Therefore, all students, including DACA students, would be eligible for funds from the HEERF.

- The bill would expand the eligible use of the funds from the institutional HEERF to those expenses associated with significant changes to the delivery of instruction "to defray the expenses (including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, payroll) incurred by institutions of higher education."

- The bill also would cancel the lesser of the borrower's total federal student loan balance, or $10,000, within 30 days of the bill's passage, for those borrowers who were economically distressed on March 12, 2020.

- The bill would pause a student's loan payments and interest accrual through September 30, 2021, a year longer than was included in the previous relief package.

- The bill retroactively extends the CARES Act borrower relief provisions, including the suspension of monthly payments and interest accrual, to borrowers with Perkins Loans, commercially-held Federal Family Education Loans (FFEL), and health professions loans offered by the Department of Health and Human Services.

- The bill clarifies that all forms of grants, including state, institutional, and private grants, will not be considered taxable income.

- The bill would waive the non-federal share requirements for nonprofit Federal Work-Study employers for 2019-2020 and 2020-2021.

- The bill would ensure that emergency financial aid grants are not treated as income or assets (including untaxed income and benefits) in the calculation of expected family contribution.

The bill will likely not receive any Republican votes, and while the bill could pass the House on May 15, 2020 when the vote is taken, it is considered dead on arrival in the Senate.

A summary of the bill is found at:
https://cdn.ymaws.com/www.ncher.us/resource/resmgr/daily_briefing/db2020/HEROSAct.pdf.

A copy of the text of the bill is found at:
https://cdn.ymaws.com/www.ncher.us/resource/resmgr/daily_briefing/db2020/download__1_.pdf.

House and Senate Democrats Introduce Bill Providing Full Student Loan Discharges to Borrowers that Attended Corinthian Colleges and ITT Tech

On May 4, 2020, House and Senate Democrats, led by Senators Dick Durbin (D-IL), Sherrod Brown (D-OH), and Elizabeth Warren (D-MA) and Representative Mark Takana (D-CA) and Pramila Jayapal (D-WA), introduced the *Coronavirus Emergency Borrower Defense Act*, which would provide full student loan discharges to borrowers that attended Corinthian Colleges and ITT Tech as well as borrowers that filed state attorneys general group discharge applications. The bills would require eligible loans to be discharged within 30 days of enactment and would provide timelines for the U.S. Department of Education to take other steps such as correcting borrowers credit reports.

A copy of Senator Durbin's press release is found at:
https://www.durbin.senate.gov/newsroom/press-releases/durbin-takano-brown-jayapal-warren-unveil-plan-to-grant-full-student-loan-discharges-to-defrauded-student-borrowers-in-next-covid-19-relief-package.

Scott and Murray Urge Secretary of Education to Delay the Proposed Rule on Distance Education

House Education Chairman Bobby Scott (D-VA) and Health, Education, Labor and Pensions (HELP) Committee Ranking Member Patty Murray (D-WA) sent a letter to the Secretary of Education urging her to delay the proposed rule on distance education in light of students and schools that are adapting to virtual classrooms as a result of the COVID-19 pandemic. The letter said that the history of fraud and abuse in distance education programs and the massive shift to online classes in response to COVID-19 has made this a particularly problematic time to make changes that could weaken accountability for distance education. The letter said: "The rapid expansion of distance education by institutions of higher education as a response to the coronavirus (COVID-19) pandemic calls for greater rather than less oversight."

A copy of the letter is found at:
https://edlabor.house.gov/imo/media/doc/House,%20Senate%20Democrats%20Warn%20DeVos%20Against%20Changing%20Distance%20Learning%20Rules%20Amid%20COVID-19%20Pandemic.pdf.

Murray and DeLauro Urge Secretary of Education to Reverse Guidance Preventing DACA Students from Receiving CARES Act Funds

On May 1, 2020, Senate Health, Education, Labor and Pensions (HELP) Committee Ranking Member Patty Murray (D-WA) and House Appropriations Subcommittee on Labor, Health and Human Services, and Education Chairwoman Rosa DeLauro (D-CT) sent a letter to Secretary of Education Betsy DeVos urging her to reverse recent guidance preventing institutions from using the CARES Act funds for students in the Deferred Action for Childhood Arrivals (DACA) program. The letter said that the "harmful and unauthorized guidance…will restrict more than 7.5 million students from accessing sorely needed emergency financial aid provided under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)," and that the barriers do not exist in the law and will prevent aid from reaching students that Congress intended to support.

A copy of the letter is found at:
https://www.help.senate.gov/imo/media/doc/CARES%20Emergency%20Financial%20Aid%20Restrictions%20Response%20FINAL.pdf.

Senate Democrats Criticize Secretary of Education for her Decision not to Fund DACA Students

On April 27, 2020, Senate Democrats, led by Senators Michael Bennett (D-CO) and Bob Menendez (D-NJ), sent a letter to Secretary of Education Betsy DeVos criticizing her for the recent decision to prohibit emergency financial aid grants included in the CARES Act from going toward students enrolled in the Deferred Action of Childhood Arrivals (DACA) program. The letter said that there was no explicit limitation on which students could receive the new grants and that thousands of DACA students should be eligible for the aid.

A similar letter was sent by House Democrats, led by Congressman Eric Swalwell (D-CA), on April 27, 2020, urging Secretary DeVos to reverse the DACA restrictions. The letter said that the Secretary should allow DACA students to receive the emergency financial aid grants. "In this extraordinary time, we should not be dividing students based on immigration status or unduly limiting aid."

A copy of the Senate Democrats' letter is found at:
https://cdn.ymaws.com/www.ncher.us/resource/resmgr/daily_briefing/db2020/Senate_letter.pdf.

A copy of the House Democrats' letter is found at:
https://cdn.ymaws.com/www.ncher.us/resource/resmgr/daily_briefing/db2020/house_letter.pdf.

President Signs *Student Veteran Coronavirus Response Act* into Law

On April 28, 2020, the President signed into law H.R. 6322, the *Student Veteran Coronavirus Response Act.* H.R. 6322 allow student veterans to continue receiving certain housing, education, and work study benefits provided through the Department of Veterans Affairs that would otherwise be reduced or halted because classes were disrupted due to COVID-19. The bill passed the House on March 31, 2020 and the Senate on April 21, 2020.

House Veterans Affairs Committee Chairman Mark Takana (D-CA), who sponsored the bill, said: "As the nation faces the COVID-19 pandemic, no student veteran should have to worry about losing income from work study jobs, interrupting their studies, or unexpected bills when their schools close."

A copy of the press release from Chairman Takana is found at:
https://takano.house.gov/newsroom/press-releases/chairman-mark-takanos-gi-bill-fix-for-student-veterans-impacted-by-covid-19-passes-senate.

Congressman Harder Urges ED to Allow Families to Update FAFSA

On April 29, 2020, Congressman Josh Harder (D-CA) sent a letter to the Department of Education urging the Secretary of Education Betsy DeVos to allow students to update their family's financial information on the FAFSA in light of the financial hardship that students and their families may be experiencing as a result of COVID-19. Congressman Harder said that he believes that the FAFSA applications are outdated and do not reflect current financial situations.

He asked the Department to provide more information and transparency around the professional judgement process that financial aid professionals can use to make necessary adjustments to a student's FAFSA application in order to accurately calculate an Expected Family Contribution (EFC).

A copy of the Congressman's letter is found at:
https://harder.house.gov/sites/harder.house.gov/files/FAFSA%20Letter%20Final%204.29.pdf.

Booker and Pressley Send Letter Urging the Department of Education and Treasury Department to Ensure Defaulted Borrowers No Longer Have Wages Garnished

On April 16, 2020, Senator Cory Booker (D-NJ) and Congresswoman Ayanna Pressley (D-MA) sent a letter, signed by more than 30 House and Senate Democrats, urging the Department of Education and the Treasury Department to issue new guidance ensuring defaulted student loan borrowers no longer have their wages garnished during the current COVID-19 crisis. The letter follows reports that some student borrowers are still having their wages garnished in spite of the new policy under the *Coronavirus Aid, Relief, and Economic Security (CARES) Act* that called for the practice to be halted for six months amid the pandemic as of March 13, 2020, the day President Trump declared a national emergency in response to the pandemic.

A copy of the letter is found at:
https://www.booker.senate.gov/imo/media/doc/Bicameral%20AWG%20Letter%20Booker%20Pressley_ARC%20copy.pdf.

Democratic Senators Send Letter to Department of Education Urging it to Exclude For-Profit Institutions from COVID-19 Funds

On April 7, 2020, Senators Elizabeth Warren (D-MA), Richard Durbin (D-IL), Sherrod Brown (D-OH), and Richard Blumenthal (D-CT) sent a letter to Secretary of Education Betsy DeVos asserting that the *Coronavirus Aid, Relief, and Economic Security (CARES) Act* only grants the Department the authority to distribute funds to "institutions of higher education" as defined in the *Higher Education Act (HEA)*, which only includes public and nonprofit institutions. The Senators wrote: "By extension, for-profit colleges are currently excluded from all other non-Title IV grant programs authorized by HEA…. As such, we believe the most legally sound interpretation of the *CARES Act* would exclude for-profit colleges from the fund entirely."

The letter urged the Department to target funds to public and nonprofit institutions. However, if the Department determines that for-profit institutions are eligible to receive allocations of funds from the *CARES Act*, the Senators recommend the following accountability policies to support students and protect taxpayers:

- Require for-profit colleges to use 100 percent of the funding under the *CARES Act* for student instruction, emergency financial aid to students, and student support services central to the colleges' mission;

- Prohibit for-profit colleges from using funds under the *CARES Act* for executive compensation and to freeze executive compensation for at least one year after the receipt of funds;
- Prohibit publicly-traded for-profit colleges from engaging in stock or share repurchases, dividend payments, or any other capital distribution to shareholders;
- Prohibit for-profit colleges from using funds under the *CARES Act* for any advertising, marketing, or recruitment;
- Prohibit for-profit colleges that receive funds under the *CARES Act* from seeking additional stimulus funds from other sources;
- Consider any funds made available to for-profit colleges under the *CARES Act* as federal revenues for the purpose of calculating 90/10 rule; and
- In the required report to Congress, detail how for-profit colleges used funds made available under the *CARES Act.*

A copy of the Senators' letter is found at: https://www.warren.senate.gov/imo/media/doc/2020.04.07%20Letter%20to%20ED%20re%20for-profit%20colleges%20in%20CARES.pdf.

OCR Issues FAQs on Meeting Civil Rights Obligations in Distance Learning

On May 12, 2020, the Department of Education's Office of Civil Rights issued Frequently Asked Questions (FAQs) addressing civil rights obligations during the COVID-19 crisis. The FAQs remind institutions that institutions that provide distance learning must continue to comply with Federal disability laws.

A copy of the FAQs is found at: https://www2.ed.gov/about/offices/list/ocr/docs/20200512-qa-psi-covid-19.pdf.

Department Issues Final Title IX Rule

On May 6, 2020, the Department of Education published the final Title IX rule in the *Federal Register*. The Notice of Proposed Rulemaking received over 124,000 comments. Some of the key provisions included in the final rule are:

- Define sexual harassment to include sexual assault, dating violence, domestic violence, and stalking, as unlawful discrimination on the basis of sex;
- Provide a consistent, legally sound framework on which survivors, the accused, and schools can rely;
- Require schools to offer clear, accessible options for any person to report sexual harassment;

- Empower survivors to make decisions about how a school responds to incidents of sexual harassment;
- Require the school to offer survivors supportive measures, such as class or dorm reassignments or no-contact orders;
- Protect K-12 students by requiring elementary and secondary schools to respond promptly when any school employee has notice of sexual harassment;
- Hold colleges responsible for off-campus sexual harassment at houses owned or under the control of school-sanctioned fraternities and sororities;
- Restore fairness on college and university campuses by upholding all students' right to written notice of allegations, the right to an advisor, and the right to submit, cross-examine, and challenge evidence at a live hearing;
- Shield survivors from having to come face-to-face with the accused during a hearing and from answering questions posed personally by the accused;
- Require schools to select one of two standards of evidence, the preponderance of the evidence standard or the clear and convincing evidence standard, and to apply the selected standard evenly to proceedings for all students and employees, including faculty;
- Provide "rape shield" protections and ensure survivors are not required to divulge any medical, psychological, or similar privileged records;
- Require schools to offer an equal right of appeal for both parties to a Title IX proceeding;
- Give schools flexibility to use technology to conduct Title IX investigations and hearings remotely; and
- Protect students and faculty by prohibiting schools from using Title IX in a manner that deprives students and faculty of rights guaranteed by the First Amendment.

A copy of the Secretary's press release is found at: https://www.ed.gov/news/press-releases/secretary-devos-takes-historic-action-strengthen-title-ix-protections-all-students.

A copy of a webinar offered by the Office of Civil Rights is found at:
https://www.youtube.com/watch?v=TdfT5R8ibm4&feature=youtu.be.

A summary of the Title IX rules is found at:
https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf.

A copy of the unofficial final rule is found at:
https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf.

Department Announces that Colleges Need to Publicly Disclose How They Spend COVID-19 Funds

On May 6, 2020, the Department of Education released an electronic announcement providing guidance requiring institutions of higher education to publicly disclose how they are spending the emergency financial aid grants to students. The electronic announcement directs institutions that applied for funds from the Higher Education Emergency Relief Fund (HEERF) to submit an initial report to the Secretary thirty (30) days from the date of the institution's Certification and Agreement to the Department. The announcement said that the instructions about sending the information to the Secretary will be provided soon.

The electronic announcement states that institutions must provide specific information in a format and location that is easily accessible to the public 30 days after the date the institution received its allocation and updated every 45 days thereafter. The disclosure must include:

- An acknowledgement that the institution signed and submitted to the Department the Certification and Agreement and assurance that the institution used or intends to use no less than 50 percent of the funds received under Section 18004(a)(1) of the CARES Act to provide Emergency Financial Aid Grants to students.

- The total amount of funds that the institution will receive or has received from the Department.

- The total amount of Emergency Financial Aid Grants distributed to students as of the date of submission of the report.

- The estimated total number of students at the institution eligible to participate under Section 484 in Title IV of the HEA and thus eligible for the Emergency Financial Aid Grants to students.

- The total number of students who have received Emergency Financial Aid Grants to students.

- The method used by the institution to determine which students receive Emergency Financial Aid Grants.

- Any instructions, directions, or guidance provided by the institution to students concerning the Emergency Financial Aid Grants.

A copy of the electronic announcement is found at:
https://ifap.ed.gov/electronic-announcements/050620HigherEdEmergencyReliefFundRptg.

ED Provides Almost $1.4 Billion in Additional Funding for Minority Serving Institutions (MSIs)

On April 30, 2020, Secretary of Education Betsy DeVos announced that almost $1.4 billion in additional funding directed toward Minority Serving Institutions (MSIs), including Historically Black Colleges and Universities (HBCUs) and Tribally Controlled Colleges and Universities (TCCUs), as well as institutions serving low-income students to help ensure learning continues during the coronavirus national emergency. The funding is part of the Higher Education Emergency Relief (HEER) Fund authorized by the CARES Act.

A copy of the press relief is found at: https://www.ed.gov/news/press-releases/secretary-devos-delivers-nearly-14-billion-additional-cares-act-relief-funds-hbcus-minority-serving-institutions-and-colleges-and-universities-serving-low-income-students.

ED Announces Progress on Next Gen FSA Initiative and Student

On April 29, 2020, the Department of Education released an electronic announcement summarizing the progress on the Next Gen FSA initiative and StudentAid.gov. The updated features are as follows:

- Annual Student Loan Acknowledgement: In this feature, student and parent borrowers can view how much they currently owe in federal loans, see their progress toward their aggregate loan and grant limits, receive helpful tips on smart borrowing, and acknowledge that they have reviewed their information. While available since April 26, 2020, the Acknowledgement is not required for loans disbursed for the 2020-2021 award year.

- Feedback Center: This feature has been integrated with StudentAid.gov and permits customers to submit a complaint and provide positive feedback.

- Status Center: This feature permits authenticated customers to review the status of their submitted feedback cases.

- Loan Simulator Enhancements: This feature, which initially launched in February 2020, has been enhanced to include additional functionality. Customers can evaluate their payment options. Recently, two new repayment goals have been added that allow borrowers to choose if they want to payoff their debt by a specific date or specify their monthly payment amount.

- Direct Loan Master Promissory Note (MPN) Updates: The MPN has been updated to align with the overall design of the StudentAid.gov website.

- FSA ID Enhancements: Customers who create an account (FSA ID) are now directed to a landing page that provides information on who should create an account and what information is needed.

- Notification Center Enhancements: The Center was updated to provide customers with the ability to see their notification history, view unread notifications, and dismiss notifications. Notifications were added for income-driven repayment plan recertification, aid overpayment, and TEACH Grant reconsideration.

A copy of the electronic announcement is found at:
https://ifap.ed.gov/electronic-announcements/042920nextgenfsaaddstudentaidgovwebstartapril2020.

IG Releases its COVID-19 Oversight Plan

On May 2020, the Department of Education's Office of Inspector General (OIG) released its "Coronavirus Relief Oversight Plan," which will be used to provide oversight over the Department's implementation of the CARES Act. According to the Plan, the IG will audit Department and grantee management and spending of the funds, examine the effectiveness of the relief programs, and investigate misuse, theft, and other criminal activity involving the funds. The Plan states that the IG will examine the Department's monitoring and schools' use of funds from the Higher Education Emergency Relief Fund, particularly the obligation to use 50 percent of funds for grants to students; the Department's implementation of requirements to adjust subsidized loan and Pell Grant usage for periods that students do not complete due to a qualifying emergency; and the Department's process to cancel the borrower obligations to repay Federal Direct Loans associated with a period where the student withdrew as a result of a qualifying emergency. It also states that it will examine FSA's implementation of the suspension of involuntary collections on defaulted student loans; FSA's use of the $40 million made available for federal student loan servicing; and the Department's use of authority to compensate contractors to pay employees assigned to federal contracts who would not work because of the COVID-19 pandemic.

A copy of the OIG Oversight Plan is found at:
https://cdn.ymaws.com/www.ncher.us/resource/resmgr/daily_briefing/db2020/DOECARESActOversightPlan.pdf.

Department Expands Second Chance Pell Experiment

On April 24, 2020, Secretary of Education Betsy DeVos announced that the Department is inviting a new cohort of 67 schools to participate in its Second Chance experiment, creating more education opportunities for incarcerated students. Secretary DeVos said: "I've had the pleasure of visiting several Second Chance Pell institutions and have seen firsthand the transformative impact the experiment has on the lives of individuals who are incarcerated. The expansion more than doubles the size of the experiment, allowing incarcerated students to use Federal Pell Grants at 130 schools located in 42 states and the District of Columbia. Prior to this announcement, there were 63 schools located in 26 states participating in this experiment.

A copy of the press release is found at: https://www.ed.gov/news/press-releases/secretary-devos-expands-second-chance-pell-experiment-more-doubling-opportunities-incarcerated-students-gain-job-skills-and-earn-postsecondary-credentials.

Deadline Extended for CDR Appeals and FWS Community Service Requirements Waived

On April 23, 2020, the Department of Education issued an electronic announcement delaying the appeals of institutions' draft CDRs for FY 2017. A notice to this effect will be published in the *Federal Register*.

A school is expected to expend at least seven percent (7%) of its FWS federal allocation to pay the federal wages to students employed in community service jobs in an award year. A school is also expected to pay the institutional share of wages to students employed in community service jobs. In addition, one or more of the school's FWS students must be employed as a reading tutor for children in a reading tutoring project or performing family literacy activities in a family literacy project. To reduce the burden on schools, and in recognition that some community service employment opportunities may be disrupted because of the COVID-19 pandemic, ED is sending a notice to the *Federal Register* granting a waiver of the FWS community service requirements for the 2019-2020 and the 2020-2021 award years. No action needs to be initiated by schools in order to request the waiver for either year.

A copy of the electronic announcement is found at**:** https://ifap.ed.gov/electronic-announcements/042320FY2017CDRDeadlineModUpdateFWSCommRelatedCOVID19.

Department Delivers $6.2 Billion in Additional Grant Funding for Colleges and Universities to Cover Costs Associated with Significant Changes for the Delivery of Instruction Due to COVID-19

On April 21, 2020, after making available more than $6 billion for colleges and universities to provide direct emergency financial aid grants to students, Secretary of Education Betsy DeVos announced the availability of an additional $6.2 billion to higher education institutions to ensure "learning continues when unexpected circumstances arise. Accordingly, the additional funds made available today can be used to expand remote learning programs, build IT capacity, and train faculty and staff to operate in a remote learning environment so that at any moment institutions can pivot quickly." The institutional funds may be used to reimburse themselves for refunds they made to students for room and board and other services, such as internet access, that are no longer available because the school is closed. The guidelines also prohibit schools from using the funds for marketing, recruiting students, increasing endowments, and building sports facilities. School allocations are set by formula prescribed in the CARES Act, which is weighted significantly by the number of full-time students who are Pell-eligible, but also takes into consideration the total population of the school and the number of students who were not full-time online before the coronavirus. The funding allocations are part of the almost $31 billion Congress allocated to the Department to distribute to students, K-12 students, and higher education.

The Recipient's Funding Certification and Agreement requires institutions to comply with all reporting requirements, which require the submission of quarterly reports to the Secretary. Institutions will have to report on the use of the funds for Recipient's Institutional Costs, accounting for the amount of reimbursements to the Recipient for costs related to refunds made to students for housing, food, or other services that Recipient could no longer provide, and describing any internal controls Recipient has in place to ensure that funds were used for allowable purposes and in accordance with cash management principles. Similar to the HEERF-student share requirements, institutions must certify that they will "to the greatest extent practicable" continue to pay their employees and contractors during the period of disruption.

A copy of the Secretary's press release is found at: https://www.ed.gov/news/press-releases/secretary-devos-delivers-6-billion-additional-grant-funding-support-continued-education-americas-colleges-universities.

On April 21, 2020, Secretary of Education DeVos, Acting Under Secretary Diane Auer Jones, and Assistant Secretary for Postsecondary Education Bob King held a briefing to provide clarifying guidance regarding the use of the emergency financial aid grants for students as well as announcing that the Department was making the remaining $6.2 billion for the institutional share of funds available under the Higher Education Emergency Relief Fund (HEERF).

The Secretary released Frequently Asked Questions for the institutional share and the emergency financial aid grants for students. The Department also released the application process for the institutional funds.

The FAQs for the institutional shares are found at:
https://www2.ed.gov/about/offices/list/ope/heerfinstitutionalfaqs.pdf. (See article below about the emergency financial aid grants for students.)

Secretary Calls on Wealthy Institutions to Reject Federal Emergency Funds

On April 22, 2020, in conjunction with the announcement of the availability of institutional grants under the HEERF on April 21, 2020, Secretary of Education Betsy DeVos called on wealthy institutions to reject the federal emergency funds. Secretary DeVos said that "wealthy institutions that do not primarily serve low-income students do not deserve additional taxpayer funds." As a result, Stanford University withdrew its application for $7.4 million in funding, Princeton University rejected the $2.4 million in funding, and Yale University indicated that it plans to reject the funding.

A copy of the press release is found at: https://www.ed.gov/news/press-releases/secretary-devos-calls-wealthy-institutions-reject-taxpayer-emergency-funds-congress-change-eligibility.

Department of Education Announces the Availability of More than $6 Billion in Emergency Relief Funds for Students

On April 9, 2020, Secretary of Education Betsy DeVos announced the availability of more than $6 billion that will be distributed to colleges and universities to provide emergency cash grants to their students whose lives were disrupted by COVID-19. The *Coronavirus Aid, Relief, and Economic Security (CARES) Act* (P.L. 116-136) provides almost $14 billion to support postsecondary education students and institutions. The Secretary said in a press release that the Department is prioritizing getting to fund out the door to college students who need it the most. School allocations were set by a formula prescribed in the *CARES Act* that is weighted significantly by the number of full-time students who are Pell-eligible, but to a lesser extent, the formula considers the non-Pell-eligible population of the school. The Department used the data from IPEDS and FSA for this calculation.

Colleges and universities are required to utilize the $6.28 billion made available on April 9th to provide grants to students for expenses related to disruptions to their education due to the COVID-19 crisis, including course materials, technology, food, housing, health care, and childcare. Institutions are expected to develop their own systems and processes for distributing funds to students and must report 30 days after the date of the Certification and Agreement, and every forty-five days thereafter, to the Secretary 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. In addition, the institution 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 possible.

In the cover letter to college presidents, the Secretary encouraged institutions to prioritize students with the greatest need, but at the same time, institutions should consider establishing a maximum funding threshold for each student to ensure that these funds are distributed as widely as possible. The Secretary suggested that "[a]s a point of reference, you might consider using the maximum Federal Pell grant (for the 2019-2020 academic year, $6,195) as the threshold." In the guidance released on April 21, 2020, the Department of Education informed institutions that they are only allowed to issue emergency financial aid grants to students who are eligible for financial aid (i.e., being a citizen or eligible noncitizen, have a Social Security number, and a high school diploma, GED, or completed high school as a homeschooled student), which eliminates international students and undocumented immigrants.

In order to access the funds, the Department must receive a signed Funding Certification and Agreement from the educational institution affirming they will distribute the funds in accordance with the law. The Funding Certification and Agreement requires educational institutions to make emergency grants available to students promptly and prohibits the reimbursement of any costs or expenses, "including any refunds or other benefits that [institutions] previously issued to students." Failure to comply with the terms and conditions in the Funding Certification and Agreement could result in penalties to an institution.

The letter to college presidents said that the remaining 50 percent of the funds to be used for institutional purposes will be allocated soon, which the Department is working on expeditiously.

A copy of the Secretary's press release is found at:
https://www.ed.gov/news/press-releases/secretary-devos-rapidly-delivers-more-6-billion-emergency-cash-grants-college-students-impacted-coronavirus-outbreak.

A copy of the cover letter to college presidents is found at:
https://www2.ed.gov/about/offices/list/ope/caresactgrantfundingcoverletterfinal.pdf.

A copy of the Funding Certification and Agreement is found at:
https://www2.ed.gov/about/offices/list/ope/caresheerfcertificationandagreementfinalombapprovedforissuance.pdf.

A copy of the allocations to institutions is found at:
https://www2.ed.gov/about/offices/list/ope/allocationsforsection18004a1ofcaresact.pdf.

On April 10, 2020, the Department of Education issued additional instructions on the submission of the Funding Certification and Agreement on the *CARES Act*: Higher Education Emergency Relief Fund website. The posting is available at:
https://www2.ed.gov/about/offices/list/ope/caresact.html.

A copy of the Frequently Asked Questions for emergency financial aid grants for students is found at: https://www2.ed.gov/about/offices/list/ope/heerfstudentfaqs.pdf.

IRS Announces that Emergency Aid to Students is not Taxable

On May 7, 2020, the Treasury Department released guidance on the taxability of emergency grant funding provided to students through the CARES Act. In a FAQ document, the Internal Revenue Service (IRS) stated: "Emergency financial aid grants under the CARES Act for unexpected expenses, unmet financial need, or expenses related to the disruption of campus operations on account of the COVID-19 pandemic…are qualified disaster relief payments under section 139 of the Internal Revenue Code. This grant is not includable in your gross income."

A copy of the FAQ document is found at: https://www.irs.gov/newsroom/faqs-higher-education-emergency-relief-fund-and-emergency-financial-aid-grants-under-the-cares-act.

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