Overview

For additional guidance, please refer to Steptoe’s COVID-19 Resource Center.

On March 27, 2020, President Trump signed the “Coronavirus Aid, Relief, and Economic Security Act” (the CARES Act), after the US House of Representatives approved it by voice vote on March 27 and the Senate passing it by a vote of 96-0 on March 25. The CARES Act’s estimated $2.2 trillion price tag includes extraordinary public health spending to confront the COVID-19 pandemic; immediate cash relief for individual citizens; a broad lending program for small and mid-size business; and targeted relief for hard-hit industries.

Beyond these broader provisions, a significant amount of assistance will be available to Institutions of Higher Education (IHEs) that have been deeply affected by COVID-19. A large portion of that money will be through the Economic Stabilization Fund managed by the Department of Education, but funding could also be available through other streams and programs, as described below.

Our Government Affairs and Public Policy Group is available to analyze the unique attributes of specific IHEs and assist in developing a successful strategy moving forward.

Developing a Response Strategy

IHEs will likely receive direct payments automatically based on federal programs for which funding was directed in the CARES Act; however, they may also be eligible for a number of other assistance programs that might not immediately come to mind. For that reason, IHEs will want to:

- Fully understand and segment their activities into eligible categories of activities;
- Apply payments under these various programs carefully so as not to pay for expenses that are otherwise reimbursable from other federal sources; and
- Leave certain categories of expenses without reimbursement.

Each source of assistance and category of cost will need to be synchronized internally and with insurance reimbursements, if applicable, in order to avoid non-duplication of assistance provisions.

As such, the first step would be to divide the IHE into various categories of activities—delineated by facilities/departments or cutting across different facilities or departments—to determine the applicable assistance programs. For instance, sources of funding could include:
The Public Health and Social Services Emergency Fund and other grant programs through Health and Human Services (HHS) for activities such as those involving on-campus health programs;

Community Development Block Grants through the Department of Housing and Urban Development meant to assist institutions that support underserved populations; and

Byrne-JAG Grants from the Department of Justice for campus police and public safety functions.

Each IHE will have its own specific functions and attributes raising the possibility that additional assistance may be possible.

Second, IHEs should determine their level of funding under Department of Education allocations (described in more detail below); determine their eligibility for any discretionary grants overseen by the Secretary of Education; and understand the categories of expenses available under these grants (e.g., lost revenues from tuition refunds and other lost income, surge costs, etc.) and how they compare to eligibility under other grant programs.

Finally, for certain categories of remaining expenses (e.g., those involving emergency protective work) IHEs could seek assistance from various grants via the Federal Emergency Management Agency to cover costs related to emergency preparedness and other surge costs to both help prevent the spread of COVID-19 and respond to the pandemic.

Department of Education Allocations

With respect to the Department of Education funding streams, three are allocated via formula funding to existing funds (e.g., the Governor’s Emergency Education Relief Fund, the Higher Education Emergency Relief Fund, and the Elementary and Secondary School Emergency Relief Fund), and one is provided on a discretionary basis (for institutions severely impacted by COVID-19 within the Higher Education Emergency Relief Fund).

The CARES Act allocated $30,750,000,000 to an Education Stabilization Fund. Of that amount,

- 8% ($2,953,230,000) is allocated to a Governor’s Emergency Education Relief Fund;
- 3% ($13,952,505,000) is allocated to the Higher Education Emergency Relief Fund; and
- 9% ($13,229,265,000) is allocated to the Elementary and Secondary School Emergency Relief Fund.[1]

For purposes of this alert, we will focus on those funds available to institutions of higher education (as defined in the Higher Education Act), and not to K-12 and local school districts.

Higher Education Emergency Relief Fund. The CARES Act establishes a formula for the Secretary of Education to use in allocating funds from this fund.

- Institutions of Higher Education. Of the amount allocated in the Higher Education Emergency Relief Fund, 90% ($12,557,254,500) will be set aside for each institution of higher education to prevent, prepare for, and respond to the coronavirus based on the following formula:
  - 75% 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
  - 25% 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.

- Historically Black Colleges and Universities (HBCUs). Of the amount allocated in the Higher Education Emergency Relief Fund, 7.5% ($1,067,793,750) will be set aside for HBCUs to address needs directly related to coronavirus.

These awards will be in addition to awards made pursuant to the Higher Education Emergency Relief Fund and can be used to “defray 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 and for grants to students for any component of the student’s cost of attendance[2] . . . including food, housing, course materials, technology, health care, and child care.”

- Institutions Severely Impacted by the Coronavirus. Of the amount allocated in the Higher Education Emergency Relief Fund, 2.5% ($355,931,250) will be set aside for IHEs that the Secretary determines have the greatest unmet needs related to coronavirus. Specifically, this money is available via the Fund for the Improvement of Postsecondary Education Program (FIPSE).[3]

Whereas the previous funding mechanisms were allocated based on a formula, this particular stream gives the Secretary discretion to decide the recipients. Specifically, the CARES Act directs the Secretary to give priority under this provision to “any institution of higher education that is not otherwise eligible for funding of at least $500,000 under the prior two funding opportunities and that demonstrates significant unmet needs related to expenses associated with coronavirus.”

IHEs that receive these funds could use them to “defray 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 and for grants to students for any component of the student’s cost of attendance[2] . . . including food, housing, course materials, technology, health care, and child care.”
Governor’s Emergency Education Relief Fund. The Education Stabilization Fund gives grants to states upon application by the governor of the state, based on the following allocation formula:

- 60% on the basis of the state’s relative population of individuals aged 5 through 24; and
- 40% on the basis of the state’s relative number of children counted per the requirements in the Elementary and Secondary Education Act of 1965.

The CARES Act allows the governor to allocate money to three different areas, two of which are relevant for IHEs, including the provision of:

- Emergency support through grants to IHEs “serving students within the state that the governor determines have been most significantly impacted by coronavirus to support the ability of such institutions to continue to provide educational services and support the on-going functionality of the institution.”
- Support to any other IHE, local educational agency, or education related entity within the state that the governor deems “essential for carrying out emergency educational services to students for [certain] authorized activities[].”

Restrictions on Use of Funds

The funding provided under the Higher Education Emergency Relief Fund does have some restrictions. First, no less than 50% of the funds must be used “to provide emergency financial aid grants to students for expenses related to the disruption of campus 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).” Second, the funds should not be used for “payments 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.”

Compliance Requirements and Audit Preparation

An institution receiving funds under the Higher Education Emergency Relief Fund is required to submit a report to the Secretary at the discretion of the Secretary that describes how the funds were used.

This reporting requirement makes an internal compliance program related to the use of these funds critical—making sure an IHE is prepared for a prospective audit would be a required and immediate step.

Click here for the Congressional Research Service’s Estimated State Grants and Institution of Higher Education Grants Aggregated at the State Level for the Education Stabilization Fund Included in the CARES Act.