

Powers Summary of Higher Education Provisions in the \$2 Trillion Federal Economic Relief Package Known as the CARES Act

The President signed a \$2 trillion federal economic relief package on Friday, March 27, that provides financial assistance and other relief to individuals and businesses impacted by the spread of the 2019 novel coronavirus (“COVID-19”). The spread of COVID-19 has had an unprecedented impact on higher education institutions across the country, including the closure of campuses and the transition of academic programs from on-ground to online delivery. The economic relief package is contained in the Coronavirus Aid, Relief and Economic Security (“CARES”) Act and includes provisions for financial assistance and other regulatory relief benefitting students and their postsecondary institutions.

This article provides an executive summary of the higher education provisions of the CARES Act and then a section-by-section overview.

EXECUTIVE SUMMARY

- **Stimulus Funds:**

- **Emergency Relief to Institutions and Students (Section 18004):** The law creates a \$14B higher education emergency relief fund for the U.S. Department of Education (“Department”) to distribute directly to institutions of higher education. Institutions are required to use at least half of the funds for emergency grants to students for expenses related to disruptions in campus operations (e.g., food, housing, etc.). For most institutions, the remaining funds may be used to prevent, prepare for, and respond to COVID-19, including to cover costs associated with significant changes to the delivery of instruction due to COVID-19.
- **Emergency Relief to Institutions through State Grants (Section 18002):** The law creates a \$3B Governor’s Emergency Education Relief Fund for the Department to make grants to applying states and, in turn, for states to make grants to institutions of higher education and local education agencies.

- **Regulatory Relief:**

- **R2T4 Relief and Student Loan Cancellations (Section 3508):** The law requires the Department to waive the R2T4 requirement for students and institutions to repay Title IV funds if a student withdraws from any institution due to the COVID-19 emergency. The law also requires the Department to cancel the borrower’s obligation to repay the portion of a Direct Loan associated with a payment period during which the student withdrew due to the COVID-19 emergency.
- **Leaves of Absence (Section 3508):** The law expands the authority to place students on an approved leave of absence due to the COVID-19 emergency.
- **Satisfactory Academic Progress (Section 3509):** The law authorizes institutions to exclude from SAP calculations attempted credits not completed due to the COVID-19 emergency.

- **Campus-Based Aid Relief:**
 - **Federal SEOG Emergency Grants (Section 3504):** The law allows use of FSEOG funds to award emergency grants to students.
 - **Federal Work Study Relief (Section 3505):** The law allows Federal Work Study students to continue being paid even if unable to work.
 - **Institutional Match Waivers (Section 3503):** The law waives the non-Federal share matching requirement for SEOG and certain FWS positions in order to allow institutions to use the funds for other purposes.
- **Student Relief:**
 - **Borrower Relief (Section 3513):** The law suspends payments and interest accruals on Federal Direct Loans and FFEL loans through September 30, 2020 as well as collection activity on such loans.
 - **Loan and Grant Duration Limits (Sections 3506 and 3507):** The law exempts semesters that students cannot complete due to COVID-19 from the maximum period during which students may receive Federal Subsidized Direct Loans or Pell Grants.
 - **Other Relief (Sections 3514 and 3519):** The law provides other student relief related to TEACH grants and to the National and Community Service Corp.
- **Other Provisions:** The law contains other higher education provisions related to **foreign institutions** (Section 3510), **National Emergency Education waivers** (Section 3511), **HBCU financing** (Section 3512), **Workforce Innovation Opportunity Act** (Section 3515), **technical amendments** (Section 3516), **waiver authority** (Section 3517), and **authorized use of certain grants** (section 3518).

We anticipate the Department and state governments will issue additional guidance related to provisions of the CARES Act in the coming days and weeks as the relief is implemented. The summaries below therefore remain subject to further updates and guidance from the Department and others. We will continue to monitor and report on these developments as they unfold. The article is a follow-up to our update from March 25, 2020 in which we reported on prior recent guidance from the Department and other regulators related to COVID-19 and postsecondary institutions.

This article is provided for general informational purposes only.¹ If you have any questions, please reach out to the Powers attorney with whom you regularly work, or reach out to any one of us at the following link: <https://www.powerslaw.com/professionals/>.

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Coronavirus Aid, Relief, and Economic Security (“CARES”) Act

Passed by the U.S. Senate, March 26, 2020.

Passed by the U.S. House of Representatives, March 27, 2020.

Enacted by the President, March 27, 2020.

The following is a summary of the provisions in:

Title III: *Supporting America’s Health Care System in the Fight Against the Coronavirus*

Subtitle B: *Education Provisions*

- **Sec. 3501. Short Title**
 - “COVID-19 Pandemic Education Relief Act of 2020”.
- **Sec. 3502. Definitions**
 - Summary of Provisions
 - The term “institution of higher education” has the same meaning as that term under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002). Thus, “institution of higher education” includes public and nonprofit institutions included in Sec. 101 of the HEA, as well as proprietary institutions, postsecondary vocational institutions, and for purposes of Direct Loan eligibility, institutions outside the U.S. that are comparable to a nonprofit institution of higher education as determined by the Secretary of Education.
 - The CARES Act also includes definitions of the terms coronavirus; foreign institution; qualifying emergency; and Secretary.
- **Sec. 3503. Campus-Based Aid Waivers**
 - Summary of Provisions
 - *Matching requirement waived.* The 25% non-Federal share matching requirements of the Federal Supplemental Educational Opportunity Grant (FSEOG) and Federal Work-Study (FWS) programs would be waived for the 2019-2020 and 2020-2021 award years in cases where the non-federal share is paid by the institution.
 - *FWS funds can be transferred to FSEOG program.* The bill allows the transfer of up to 100% of the unexpended FWS funds to the FSEOG allocation during the period of a qualifying emergency.
 - Limitations
 - The waiver is for the 2019-2020 and 2020-2021 award years and applies to FWS positions where the non-federal share is paid by the institution. The waiver of the non-federal share does not apply to private sector employment under the FWS program.
 - General Comments
 - The bill allows institutions to use institutional funds that would have been used to match FWS and FSEOG funds for other purposes.

- **Sec. 3504. Use of SEOG for Emergency Aid**
 - Summary of Provisions
 - Institutions will be allowed to use any portion of their FSEOG allocation to award emergency financial aid grants to assist undergraduate or graduate students for unexpected expenses and unmet financial need as the result of a qualifying emergency.
 - In determining eligibility for and awarding emergency financial aid grants, an institution may:
 - Waive the amount of need calculation under Sec. 471 (Need = COA – EFC – EFA) of the HEA;
 - Allow for students affected by a qualifying emergency to receive funds in an amount not more than the maximum Pell Grant for the applicable award year; and
 - Contract with a scholarship-granting organization designated for the sole purpose of accepting applications from or disbursing funds to students enrolled in the institution of higher education, if such scholarship-granting organization disburses the full allocated amount provided to the institution to the recipients.
 - Limitations
 - If the “applicable award year” is the 2019-2020 award year, then the maximum Pell Grant award for 2019-2020 is \$6,195.
 - Any emergency financial aid grants to students would not be treated as Estimated Financial Assistance under Sec. 471.
 - Issues – Open Questions
 - Could the applicable award also be the 2020-2021 award year and the maximum Pell Grant would be \$6,345?
 - Schools will need to determine the criteria for establishing the emergency financial aid grants, although we believe it would be a low bar to demonstrate that students were affected by the COVID-19 pandemic.
 - General Comments
 - This provides an opportunity for students to have additional sources of financial aid, yet at the same time, they will be living at home taking online courses and not commuting or living on-campus. Schools will need to determine the appropriate basis for and amount of awards.
- **Sec. 3505. FWS**
 - Summary of Provisions
 - The bill codifies the recent flexibility offered by the Department of Education allowing FWS students unable to work for all or part of the academic year due to a qualifying emergency to continue to be paid, not to exceed one academic year, as follows:
 - In an amount equal to or less than the amount of the wages such students would have been paid had the students been able to work, as a one-time grant or as multiple payments;

- Payments may not be made to any student who is not eligible for FWS or was not completing the work obligation necessary to receive FWS funds prior to the qualifying emergency; and
 - Any payments made to affected FWS students shall meet the matching requirements unless the matching requirements are waived.
 - Issues
 - We have posed the question to the Department as to whether a student who was scheduled to begin FWS employment but had not yet begun at the time of the qualifying emergency would be eligible for FWS wages.
 - General Comments
 - Congress codified ED’s flexibility in permitting students who are unable to work to receive FWS wages during the qualifying emergency. The Department’s March 20, 2020 guidance required that essential faculty and staff continue to be paid and that the institution continue to meet its institutional wage share requirement. These additional requirements are presumably no longer effective.
- **Sec. 3506. Adjustment of subsidized loan usage limit**
 - Summary of Provisions
 - The Secretary shall exclude from a student’s subsidized loan usage limit any semester (or equivalent) that the student does not complete due to COVID-19 if the Secretary can administer such policy in a manner that limits complexity and burden on the student.
 - General Comments
 - The current law places limits on the length of time for which students may be eligible to receive Federal Direct Subsidized Stafford Loans (generally 150 percent of the published program length). This provision is intended to exclude from this time period semesters or equivalent academic periods a student does not complete due to COVID-19.
 - The statutory language specifically references the Secretary’s administration of a policy regarding exclusions to subsidized loan usage limits. Therefore, we anticipate the Department will issue guidance on this topic.
 - It is unclear whether the Department will require institutional cooperation, including the submission of updated academic year and loan period information to the Department’s data systems, or whether the Department will implement this exclusion on its own. We anticipate the Department will address any institutional involvement in guidance.
- **Sec. 3507. Exclusions from Pell duration limit**
 - Summary of Provisions
 - The Secretary shall exclude from a student’s Pell duration limit any semester (or equivalent) that the student does not complete due to COVID-19 if the Secretary can administer such policy in a manner that limits complexity and burden on the student.

- General Comments
 - A student may not receive Pell Grants for more than twelve semesters, or the equivalent of twelve semesters, as determined by the Secretary.
 - Similar to the exclusion to subsidized loan usage limits, the statutory language references the Secretary’s implementation of a policy so we anticipate the Department will issue guidance on this topic. We also do not yet know whether the Department will require cooperation from institutions to update student Lifetime Eligibility Units.
- **Sec. 3508(a)-(c). Institutional refunds and student loan flexibility**
 - Summary of Provisions
 - Ordinarily, where a student withdraws during a payment period (e.g., semester), both the institution and the student may be required to return unearned portions of the Title IV grant and loan funds awarded for that payment period, a process known as the Return of Title IV Funds or “R2T4”.
 - The CARES Act relieves both students and institutions from complying with R2T4 requirements where a student withdraws as a result of the COVID-19 emergency. For federal loan borrowers, the Act also directs ED to cancel the borrower’s obligation to repay any Direct Loan associated with the relevant payment period.
 - Institutions using a waiver of the R2T4 requirements will have to report (i) the number of withdrawn Title IV students, (ii) the amount of Title IV grant and loan funds associated with each such student, and (iii) the total amount of grant and loan funds the institution has *not returned* due to the waiver.
 - Limitations
 - The R2T4 waivers apply when a student withdraws “as a result of” the COVID-19 emergency.
 - This determination may be clear enough for students whose program is suspended or canceled, or who withdraw upon or shortly after their institution’s transition to an online-only instructional format. As time progresses, it may be less clear whether withdrawal resulted from the COVID-19 emergency or from a different personal circumstance.
 - During periods of COVID-19-related disruption, institutions should consider documenting the reason for student withdrawals to substantiate the non-performance of any R2T4 calculations (e.g., by adding a “COVID-19” check-box on the official withdrawal form to allow students to note if they are withdrawing due to COVID-19 impacts, or by following up via email with individual students).
 - As always, the R2T4 provisions do not apply to Federal Work-Study funds.
 - Institutions may still need to conduct R2T4 calculations to determine if withdrawn students are eligible for a post-withdrawal disbursement.

- Issues
 - ED will cancel loan obligations of student borrowers, which we believe also extends to Parent PLUS borrowers.
 - ED’s [prior guidance](#) to institutions included other accommodations for withdrawn students, such as a limited delay in reporting their withdrawn status to NSLDS, and the Act does not expressly preempt this prior guidance. We anticipate the Department may clarify or reiterate this guidance in future announcements.
 - The Act does not appear to include relief for students who remain enrolled, but whose enrollment status changes as a result of dropping below full-time or half-time attendance. However, in its [prior guidance](#), ED reminded institutions that they need only consider students’ enrollment status in limited circumstances (i.e., at time of disbursement for Direct Loans, and based on institutional census date(s) for Pell grants). Institutions might also consider temporarily modifying any internal policies and procedures for recalculating aid eligibility that are more stringent than what ED requires.
- General Comments
 - These waiver provisions represent significant relief to students who are unable to complete the current term/payment period due to the COVID-19 emergency. Without this relief, students who owe an “overpayment” to the government because of their mid-semester withdrawal would be barred from additional Title IV aid until they address the overpayment. In this regard, the CARES Act makes it easier for impacted students to resume their education following the emergency.
 - These waiver provisions also afford regulatory relief to all postsecondary institutions impacted by the COVID-19 emergency because the institutions will not be responsible for returning funds associated with a significant number of unanticipated withdrawals.
- **Sec. 3508(d). Approved leaves of absence**
 - Summary of Provisions
 - The CARES Act also expands options—particularly at term-based schools with traditional academic calendars—to avoid student withdrawals due to a temporary cessation of attendance by placing students on approved leaves of absence (“LOA”). The Act waives the usual requirement that a student returning from an approved LOA be able to return to school at the same point in their academic program—an accommodation not included in ED’s guidance to date—but only if they return within the same “semester (or the equivalent).”
 - Issues
 - Under this provision, an approved LOA must begin and end in the same “semester (or the equivalent).” ED may clarify the meaning of “semester (or the equivalent),” but we are assuming for now that it has the same meaning as “payment period.”

- General Comments
 - The LOA provision may afford limited relief because, as noted above, it requires students to return within the same semester (or equivalent). On the other hand, separate ED [guidance](#)—which we anticipate will remain in force—allows institutions to extend their current semesters/terms to cope with the COVID-19 emergency. For example, ED has confirmed that an institution may have “an extended spring term that will overlap with a summer term,” and still be considered to operate on a standard term calendar. Institutions are reminded that students cannot be on an approved LOA for more than 180 total days in a calendar period.
 - Approved LOAs must be granted in accordance with a written institutional policy. Institutions considering LOAs as part of their COVID-19 mitigation strategies should ensure they have an appropriate policy in place and follow ED’s other requirements for granting and documenting an approved LOA.
 - It is not clear that an institution could *require* any student to take an approved LOA, since LOA requests must typically originate with the student.
 - At least for clock-hour programs, ED’s recent guidance stated that, where students cannot complete their coursework, or cannot begin or complete their clinicals or internships/externships, due to a COVID-19-related cancellation, an institution may “put students on” approved LOAs if there is a reasonable expectation that the institution will be able to resume coursework and/or find a placement for the student within 180 days. While we believe this means a school can impose an LOA for students in clock-hour programs based on the cessation of instruction, it is not clear if ED will extend this same flexibility to credit hour programs.
 - Per ED’s [prior guidance](#), an institution may grant an approved LOA due to COVID-19 even if the student requests the leave after the student has stopped attending school, which is not typically permitted.
- **Sec. 3509. SAP**
 - Summary of Provisions
 - The bill will allow institutions to exclude from the quantitative component of Satisfactory Academic Progress (SAP) calculations any attempted credits that were not completed due to a qualifying emergency, without requiring an appeal by such student. (The assumption is that if a course is not completed, there would not be a grade.)
 - Issues
 - Systems will have to be revised to exclude the attempted credits in calculating SAP for the term(s) during the qualifying emergency, or this will have to be done manually.
 - General Comment
 - This provision is helpful to the students to ensure that the student continues to make SAP during the qualifying emergency.

- **Sec. 3510. Continuing education at Foreign Institutions (Distance Education)**
 - Summary of Provisions
 - A program that is offered in whole or in part through distance education by a foreign institution of higher education between March 1, 2020, and the date of enactment of the CARES Act is eligible under the Federal Direct Loan Program for the duration of the qualifying emergency and the following payment period.
 - Limitations
 - A foreign institution must report its use of distance education to the Secretary of Education not later than June 30, 2020 (for the 2019-2020 award year) or not later than 30 days after such use (for an award year subsequent to the 2019-2020 award year).
 - The Secretary must submit a report to Congress that identifies each foreign institution that carried out a distance education program authorized under Section 3510.
 - General Comments
 - The Higher Education Act does not permit foreign schools to provide distance learning to U.S. students for the purposes of the Direct Loan program. As noted above, the CARES Act provides an exception for the use of distance learning during the COVID-19 crisis.
 - Section 3510(a) of the CARES Act also includes broad language that appears to provide an exception for the use of distance learning in the case of a future public health emergency, major disaster or emergency, or national emergency declared by the applicable government authorities in the country in which the foreign institution is located.
- **Sec. 3510(d). Continuing education at Foreign Institutions (Written Arrangements)**
 - Summary of Provisions
 - For the duration of a qualifying emergency and the following payment period, a foreign institution may enter into a written arrangement with an institution of higher education located in the United States that participates in the Federal Direct Loan Program for the purpose of allowing a student of the foreign institution who is a Direct Loan borrower to take courses from the institution located in the U. S.
 - Limitations
 - A foreign institution that is a public or other nonprofit institution may not enter into a written arrangement with a proprietary institution. However, a foreign institution that is a graduate medical school, nursing school, or a veterinary school and that is not a public or other nonprofit institution may enter into a written arrangement with a proprietary institution.
 - A foreign institution must report its use of such a written arrangement to the Secretary of Education not later than June 30, 2020 (for the 2019-2020 award year) or not later than 30 days after such use (for an award year subsequent to the 2019-2020 award year).

- The Secretary must submit a report to Congress that identifies each foreign institution that entered into a written arrangement authorized under Section 3510.
- General Comments
 - The Department’s regulations state that programs offered in whole or in part in the U.S. by a foreign institution – such as through a written arrangement with a U.S. institution – are not Title IV eligible. The CARES Act provides an exception allowing foreign institutions to use certain written arrangements with U.S. institutions during the COVID-19 crisis. However, unlike the CARES Act exception for distance learning (see above), this flexibility appears limited to the instant COVID-19 emergency and not to future emergencies.
- **Sec. 3511. National Emergency Educational Waivers**
 - Summary of Provisions
 - The Secretary may, upon the request of a State educational agency or Indian tribe, waive certain statutory or regulatory provisions (e.g., provisions of the Elementary and Secondary Education Act) if the Secretary determines that such a waiver is necessary and appropriate due to the COVID-19 emergency.
 - No waiver authority was provided for provisions of Title IV of the Higher Education Act.
 - Limitations
 - The Secretary may not waive civil rights provisions.
 - General Comments
 - Section 3511 of the CARES Act does not allow the Secretary to waive provisions under Title IV of the Higher Education Act or Title IV regulations. Our understanding is that there may be legislative efforts in the coming months to provide the Secretary with waiver authority for statutory and regulatory provisions related to postsecondary education. We encourage institutions to consider which provisions should be waived in light of COVID-19.
- **Sec. 3512. HBCU Financing**
 - Summary of Provisions
 - The Historically Black College and University Capital Financing Program was established to provide federal assistance to facilitate low-cost capital for Historically Black Colleges and Universities. Under the CARES Act, the Secretary of Education may grant a deferment of repayment (principal and interest), for the duration of a qualifying emergency, to a HBCU that has received a loan under this Program.
 - Limitations
 - Congress appropriated \$62 million to carry out Section 3512.
 - The Secretary must submit a report to Congress that identifies each institution receiving a loan deferment under Section 3512.

- **Sec. 3513. Temporary relief for Borrowers**
 - Summary of Provisions
 - Suspends all payments due and the accrual of interest for all loans made under the William D. Ford Federal Direct Loan Program and Federal Family Education Loan (FFEL) Program through September 30, 2020.
 - Also suspends all involuntary collection of such loans made under the Direct Loans and FFEL Programs (i.e., wage garnishments, reduction of tax refunds, reduction of federal benefits, and other involuntary collection activities by the Secretary).
 - Borrowers in rehabilitation programs or loan forgiveness programs (such as the Public Service Loan Forgiveness Program) will be deemed to have made a payment for each month during which payments are suspended for the purpose of maintaining eligibility for such programs.
 - The suspension will not have a negative impact on a borrower’s credit history, because, for the purpose of reporting information to a consumer reporting agency, any suspended payment under this Section will be treated as a regularly scheduled payment made by the borrower.
 - The Secretary is required to notify borrowers about Section 3513 no later than 15 days after enactment, including that the payments have been suspended and the interest waived, that collections have been suspended, the suspension is temporary, and that borrowers can continue making payments toward a loan’s principal. In August 2020, the Secretary is also required to notify borrowers in no less than six notices that regular collection will resume.
 - Limitations
 - The suspension of payments, accrual of interest, and involuntary collections will end after September 30, 2020.
 - This Section only applies to Direct Loans and FFELs that are held by the Department of Education. If a borrower refinanced a federal loan and it is now held by a private company, this Section will not apply. It also does not apply to private education loans.
 - General Comments
 - The loan relief provision extends the President’s two-month suspension of interest accrual and payments (if requested by the borrower).
- **Sec. 3514. National and Community Service Corp**
 - Summary of Provisions
 - The Corporation for National and Community Service (“CNCS”) will allow individuals to accrue other service hours towards the amount needed to receive an educational award if their hours were limited or their position was suspended due to COVID-19.
 - The CNCS CEO may determine that individuals directed to leave their service position during CVOD-19 have met the service requirements needed to receive an educational award.
 - All funds made available to the CNCS will remain available for the fiscal year ending September 30, 2021.

- The CEO of CNCS may allow fixed-grant recipients to retain a pro rata share of grant funds if participants exited or their service was suspended due to COVID-19.
- For national service programs administered by the National Civilian Community Corps, CNCS may extend the term of service of a participant up to one year following the end of the national emergency and waive upper age limits (capped at 26), to allow programs affected by COVID-19 to return to full operation.
- **Sec. 3515. Workforce response activities**
 - Summary of Provisions
 - Local workforce investment areas within states may use up to twenty percent of the funds allotted to them for program year 2019 pursuant to the Workforce Innovation and Opportunity Act (WIOA) for administrative costs (this amount is normally capped at ten percent) provided that the portion of funds used above ten percent is used to respond to COVID-19.
 - Governors may use unobligated WIOA funds allocated to statewide workforce investment activities for program year 2019 for statewide rapid response activities related to COVID-19.
 - Governors may release to local workforce boards most impacted by COVID-19, within 30 days of the enactment of the CARES Act, any unobligated WIOA funds allocated to statewide rapid response.
- **Sec. 3516. Technical Amendments**
 - Summary of Provisions
 - Technical revisions to statutory cross-references in the Internal Revenue Code related to confidentiality and disclosures of tax return information to carry out the Higher Education Act.
- **Sec. 3517. Waiver authority and reporting requirements for institutional aid**
 - Summary of Provisions
 - The Secretary may waive certain statutory requirements for institutions receiving assistance under Higher Education Act title III (e.g., American Indian Tribally Controlled Colleges and Universities; Alaska Native and Native Hawaiian-Serving Institutions; Predominantly Black Institutions; Native American-Serving, Nontribal Institutions; Asian American and Native American Pacific Islander-Serving Institutions; Historically Black Colleges and Universities, Historically Black Graduate and Professional Institutions), title V (e.g., Hispanic-Serving Institutions), or subpart 4 of part A of title VII (e.g., Master's degree programs at Historically Black Colleges and Universities).
 - Statutory provisions that may be waived include certain:
 - Eligibility data requirements;
 - Wait-out periods;
 - Allotment requirements;
 - Allotment restrictions;

- Time-based restrictions.
 - The Secretary also may waive or modify any statutory or regulatory provision to ensure that the above-noted institutions that were receiving assistance at the time of a qualifying emergency are not adversely affected by any formula calculation for fiscal year 2020 and for the period beginning on the qualifying emergency and ending on September 30 of the fiscal year following the end of the qualifying emergency.
 - The above-noted institutions may “carry over” and expend funds that were not expended or used for the purposes for which the funds were paid to the institution during the 5-year period following the date on which the funds were first paid to the institution.
 - Limitations
 - No waiver authority was provided for provisions of Title IV of the Higher Education Act.
 - The Secretary must submit a report to Congress that identifies each institution that received a waiver or modification.
- **Sec. 3518. Authorized uses and other modifications for grants**
 - Summary of Provisions
 - As a result of a qualifying emergency, an institution or other recipient may request that the Secretary modify the required and allowable uses of funds for grants awarded under the following federal programs: Strengthening Institutions; Strengthening Historically Black Colleges and Universities; TRIO; GEAR UP; Developing Institutions; and Masters Degree Programs at Historically Black Colleges and Universities and Predominantly Black Institutions.
 - Also, as a result of a qualifying emergency, an institution or other recipient may request that the Secretary modify federal share or other financial matching requirements for a grant awarded on a competitive basis or a grant awarded under the following programs: Strengthening Institutions; Strengthening Historically Black Colleges and Universities; and Masters Degree Programs at Historically Black Colleges and Universities and Predominantly Black Institutions.
 - Limitations
 - The Secretary must submit a report to Congress that identifies each institution or other recipient that received a modification.
- **Sec. 3519. Service obligations for teachers**
 - Summary of Provisions
 - *TEACH Grants*: Secretary may modify the existing categories of extenuating circumstances for which a TEACH grant recipient may be excused from fulfilling a portion of a service obligation. Secretary will consider teaching service that is part-time or interrupted due to COVID-19 to be full time service.

- *Teacher Loan Forgiveness*: Secretary will waive requirement that teaching service be consecutive if interruption was due to COVID-19 and borrower resumes teaching service after COVID-19.
- Issues
 - *TEACH Grants*: Recipients of TEACH grants are required to provide documentation of their teaching service to the Department at the end of each academic year. Presumably this documentation should now include the nature and length of the interruption in their teaching service.
 - *Teacher Loan Forgiveness*: It is unclear whether the time period in which the teacher’s service was temporarily interrupted will count toward the five consecutive years of qualifying teaching service needed to be eligible to receive loan forgiveness.

The following is a summary of the provisions in:

Division B – Emergency Appropriations for Coronavirus Health Response and Agency Operations; Education Stabilization Fund

- **Sec. 18002. Appropriations (Governor’s Emergency Education Relief Fund)**
 - Summary of Provisions
 - Provides approximately \$3 billion for the Secretary of Education to make grants to States that apply.
 - The term “State” means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico. See Sec. 18007.
 - The Secretary calculates grant amounts to States based on the following metrics:
 - 60% on the basis of the State’s relative population of individuals aged 5 through 24.
 - 40% on the basis of the State’s relative number of children counted under ESEA.
 - States can provide grant funds to institutions of higher education:
 - That were most significantly impacted by the coronavirus, to support the ability of such institutions to continue to provide educational services and support the on-going functionality of the institution; or
 - That the State deems essential for carrying out emergency educational services to students.
 - Limitations
 - The Secretary shall invite applications from States not later than 30 days of enactment of the CARES Act and shall approve or deny applications not later than 30 days after receipt.
 - The State must return any funds that the Governor does not award within one year of receiving such funds.

- An institution of higher education that receives funds must, to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus.
- General Comments
 - Local educational agencies are also eligible under the Governor’s Emergency Education Relief Fund.
 - It remains to be seen how institutions will be expected to apply for or request funds. We anticipate the U.S. Department of Education and the states will provide guidance on these issues.
- **Sec. 18004. Appropriations (Higher Education Emergency Relief Fund)**
 - Summary of Provisions
 - Provides approximately \$14 billion for institutions of higher education.
 - Most of these funds (90%) will be provided to institutions of higher education generally to prevent, prepare for, and respond to coronavirus. Of this amount:
 - 3/4 will be apportioned according to the relative share of full-time equivalent enrolled Pell Grant recipients who were not exclusively enrolled in distance education courses prior to the coronavirus emergency.
 - 1/4 will be apportioned according to the relative share of full-time equivalent enrolled students who were not Pell Grant recipients and were not exclusively enrolled in distance education courses prior to the coronavirus emergency.
 - The precise process for distributing these funds is not fully explained in the statute. The law does say the funds will be “distributed by the Secretary using the same systems as the Secretary otherwise distributes funding to each institution under Title IV...” However, the law does not provide further details on how the Department will distribute the funds or when institutions may expect to receive them.
 - 7.5% will be provided to certain categories of minority-serving institutions to address needs directly related to COVID-19, including for grants to students and to defray expenses incurred by institutions (i.e., lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, and payroll). These funds are in addition to Higher Education Emergency Relief Funds provided under the bullet above. Institutions eligible for these funds include:
 - American Indian Tribally Controlled Colleges and Universities;
 - Alaska Native and Native Hawaiian-Serving Institutions;
 - Predominantly Black Institutions;
 - Native American-Serving, Nontribal Institutions;

- Asian American and Native American Pacific Islander-Serving Institutions;
 - Historically Black Colleges and Universities;
 - Historically Black Graduate and Professional Institutions;
 - Hispanic-Serving Institutions;
 - Masters Degree Programs at Historically Black Colleges and Universities and Predominantly Black Institutions.
- 2.5% will be provided through the Fund for the Improvement of Postsecondary Education to institutions that the Secretary determines have the greatest unmet needs related to coronavirus, which funds may be used for grants to students and to defray expenses incurred by institutions (i.e., lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings, and payroll).
- Limitations
 - Institutions must use no less than 50% of funds received under this provision to provide emergency financial aid grants to students for expenses related to the disruption of campus operations due to COVID-19. Such expenses include eligible expenses under a student’s cost of attendance, such as food, housing, course materials, technology, health care, and child care.
 - Institutions 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 receiving funds will be required to submit a report to the Secretary describing its use of funds.
 - Institutions receiving funds must, to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus. (See Sec. 18006 of the CARES Act.)
- Issues
 - The appropriations section of the CARES Act defines the term “institution of higher education” to have the “meaning given such term in title I of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).” See Sec. 18007 of the CARES Act. However, there are two definitions of “institution of higher education” in Title I of the HEA. The first definition of “institution of higher education” at Section 1001 of the HEA includes public and nonprofit institutions of higher education, but not public and nonprofit postsecondary vocational institutions or proprietary institutions. The second definition at Section 1002 of the HEA includes public and

nonprofit institutions of higher education and postsecondary vocational schools, as well as proprietary institutions. We presume Congress intended to use a definition that includes postsecondary vocational schools and proprietary institutions since the COVID-19 pandemic has significantly impacted students and institutions across all sectors (and arguably has impacted low-income students more than students from wealthier families). The U.S. Department of Education will have an opportunity to interpret the CARES Act and confirm that all institutions referenced under Section 1002 are eligible for funding under the Higher Education Emergency Relief Fund.

- Institutions should carefully document their use of funds received under this provision, including substantiating that all funds were used for permissible expenses. The Department could conduct reviews in the future to evaluate whether funds were spent in compliance with the law.
 - We anticipate there will be questions regarding the scope of “expenses related to the disruption of campus operations” and of “costs associated with significant changes to the delivery of instruction.” Institutions should watch for additional guidance from the Department regarding permissible use of these funds.
- General Comments
 - We anticipate there will be scrutiny regarding the use of Higher Education Emergency Relief Funds to pay third-party service providers. Institutions should develop accounting systems that enable a demonstration that Relief Funds were not used to pay third-party recruiters.

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