

**COVID-19 Guidance for Postsecondary Institutions**  
**UPDATE: April 10, 2020**

This updated article provides links to, and briefly summarizes, legislation and federal agency guidance designed to ease the burden on higher education institutions.

**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 COVID-19. The economic relief package is known as the Coronavirus Aid, Relief and Economic Security (“CARES”) Act and includes provisions for financial assistance and other regulatory relief to students and their postsecondary institutions. While this article addresses some provisions of the CARES Act, Powers has also posted a more complete [summary of the higher education provisions in the CARES Act](#). Please also visit the [Powers COVID-19 Resource Page](#) for additional helpful resources and information.

**U.S. Department of Education Guidance**

To assist institutions in making changes to their operations and complying with Title IV of the Higher Education Act (“Title IV of the HEA”), the U.S. Department of Education (“ED” or “Department”) published an electronic announcement titled “[Guidance for interruptions of study related to Coronavirus \(COVID-19\)](#)” on March 5, 2020 (“3/5 Guidance”). On March 20, 2020, the Department supplemented the Guidance with [additional frequently asked questions \(“3/20 FAQs”\)](#).

On April 3, 2020, the Department issued [updated guidance that takes into account the CARES Act \(“4/3 Updated Guidance”\)](#). On April 9, 2020, the Department [announced](#) that \$6 billion will be distributed immediately to colleges and universities to provide direct emergency cash grants to students whose lives and educations have been disrupted by COVID-19. The funding is available through the Higher Education Emergency Relief Fund authorized by CARES Act. However, ED is continuing to review several CARES Act provisions (including institutional funding under the Higher Education Emergency Relief Fund) and will provide additional guidance on those issues in the near future.

In the 4/3 Updated Guidance, the Department also recognized that social distancing may continue for longer than was initially anticipated and has extended the flexibilities provided in its three guidance documents to any payment period or term beginning between March 5, 2020, and June 1, 2020, inclusive. Most flexibilities described will remain in effect at least through June 30, 2020.

Taken together, the CARES Act and the Department’s guidance have significant implications for institutional administration of the Title IV programs in the COVID-19 era, including the following:

- *Approval to Offer Distance Education:* The Department provided broad approval for institutions to offer distance education on a temporary basis to students currently in attendance without going through the regular approval process. Distance education need not be provided via sophisticated software or online platforms unless needed to comply with accreditor standards (which accreditors may waive), although instructors must initiate substantive communications with students on a regular basis.
  - Accreditors are encouraged to waive the distance education review process and to promptly develop new policies for the rapid approval of distance education programs offered by affected institutions. Accreditors should document how their decision-making bodies waived or provided expedited review of distance education programs.
  - Temporary approval is effective for enrollment in payment periods that overlap with the 3/5 Guidance or that begin on or between March 5, 2020 and June 1, 2020.
  - The 3/20 FAQs clarify that institutions may offer a clock-hour program via distance education format if they ensure each clock hour is supervised by qualified institutional personnel. Institutions must ensure clock hour programs offered via distance education comply with applicable requirements of accreditors, state agencies, and education prerequisites for state licensure.
    - This flexibility does not apply to clock-hour programs that lead to licensure if the applicable licensing agency does not accept distance learning hours or give credit for them toward hours students must complete.
  - Institutions may enter into consortium agreements and accreditors may waive requirements related to the percentage or number of credits earned in residence at the home institution.
  
- *Return of Title IV Funds (R2T4) Waiver and Direct Loan Cancellation:* The CARES Act directs the Department to waive any requirements for an institution or student to return unearned Title IV funds, and to cancel any Direct Loans associated with the relevant payment period, when a student withdraws due to COVID-19. Per the 4/3 Updated Guidance, the Department is studying these provisions and plans to issue further guidance. Initially:
  - Institutions will need to complete R2T4 calculations for withdrawn students and likely will be required to follow other usual steps when a student withdraws (e.g., making post-withdrawal disbursements), short of actually returning funds to ED. Also, the CARES Act imposes institutional reporting obligations in connection with the waiver, and we expect that completed R2T4 calculations will be needed to satisfy these obligations.
  - The R2T4 waiver and Direct Loan cancellation apply to students withdrawing “as a result of” the COVID-19 pandemic. During periods of COVID-19-related disruption, institutions should document the reason for student withdrawals to substantiate the non-performance of any R2T4 calculations.
  - The 3/5 Guidance and 3/20 FAQs contain additional guidance with respect to withdrawals at institutions that have temporarily ceased operations or extended “scheduled break” periods, which guidance is not expressly preempted by the CARES Act. We anticipate ED may reconcile its various guidance in this area based on the CARES Act.

- *Leaves of Absence:* Students may be granted an approved leave of absence (LOA) for COVID-19 related concerns, and several waivers to the usual LOA requirements are available.
  - An institution may approve a LOA even if the student requests it in writing after the LOA has begun, which is not typically permitted.
  - The CARES Act waives the requirement that a student returning from an approved LOA be able to resume at the same point in their academic program, which allows term-based schools with traditional academic calendars to permit LOAs. However, students must return from the approved LOA within the same semester (payment period) in order to take advantage of this flexibility.
  - If coursework in a program, including clinicals or internships/externships, is suspended due to COVID-19, an institution is allowed to place students on an approved LOA “until the institution can resume coursework or can find another placement for the student.” However, we see no indication that ED is waiving the usual limitation that an approved LOA may not exceed 180 days in a twelve-month period.
  - For LOAs due to suspended coursework, including clinicals or internships/externships, Department’s guidance allows an institution to “put students on” the LOA. Typically, students must originate LOA requests.
- *Satisfactory Academic Progress (SAP):* A student may file a SAP appeal because of COVID-19, even if similar special circumstances are not stated in the institution’s SAP policy. The 4/3 Updated Guidance reflects the additional flexibilities to institutions included in the CARES Act by allowing institutions to exclude from the quantitative component of SAP any attempted credits that were not completed by a student affected by COVID-19 without requiring an appeal from the student. The Department plans to provide additional guidance regarding how to implement these additional flexibilities.
- *Students Who Did Not Begin Attendance:* Institutions need not return Title IV loan funds disbursed as a credit balance as long as the institution was not aware a student would not attend prior to disbursement. Institutions should not notify the loan servicer of a student who did not begin attendance.
- *Enrollment Status Changes:* The Department cannot waive the requirement to disburse Title IV funds based on a student’s actual enrollment status (e.g., half-time, full-time). However, the Department’s guidance reminds 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.
- *Academic Year:* If an institution closes for a period or otherwise shortens a term due to COVID-19 disruptions, it can contact its School Participation Division to request a temporary reduction in academic year length. (See 4/3 Updated Guidance for instructions for making

this request.) A reduced academic year must still contain at least 26 weeks of instructional time under ED's regulations.

- *Academic Calendars; Scheduling Flexibility:* The Department is providing scheduling flexibility when planned instructional time is lost to COVID-19 disruptions (e.g., temporary closure; loss of travel abroad or experiential learning credit). Institutions may extend their terms and offer courses on a schedule that would otherwise trigger non-term or non-standard term treatment, while continuing to disburse Title IV aid based on a standard term calendar. For example, the 3/20 FAQs confirm that standard term treatment would continue to apply even where a Spring term is extended due to COVID-19 and overlaps with the Summer term (such overlap would normally make the program a non-term program).
- *Verification Status Code "W":* ED is cancelling the warning and "deobligation" process for student records with a verification status of "W" that had been scheduled for April 2020. This is typically the process under which schools are warned that certain Pell Grant disbursements will be regarded as "overawards" and will be reduced to a zero-dollar amount. The Department is re-evaluating the processes scheduled for July and October and will likely issue additional guidance.
- *Verification Groups V4 and V5:* For the Custom Verification Group (V4) and the Aggregate Verification Group (V5), institutions ordinarily must complete verification in-person or via a notary. The 4/3 Updated Guidance provides flexibilities if the institution is unable to receive the required documents in-person or by mail, and/or if the applicant or student is unable to provide the required documents in person or cannot provide notarized documents by mail. Specifically, ED suspended the in-person and notary requirements for the V4 and V5 Verification Groups and allows an applicant to submit copies of the required verification documents electronically. Institutions also are permitted to accept an expired document if it expired after March 1, 2020. Finally, ED is waiving the parent signature requirements for a dependent student, provided that the institution documents why neither of the student's parents was available to provide a signed statement.
- *Need Analysis:* Any aid students may receive from a federal or state entity as a result of the COVID-19 emergency, including grants or low-interest loans, should not be included as income when calculating a family's Expected Family Contribution or as estimated financial assistance for packaging purposes.
- *Professional Judgement:* Financial aid administrators may use professional judgement to adjust cost of attendance where students have been affected by COVID-19, and the 4/3 Updated Guidance "encourages FAAs to use professional judgment to reflect more accurately the financial need of students and families affected by the COVID-19 pandemic." As usual, professional judgment must be exercised on a case-by-case basis and documentation must be retained in the student file. (Note: The ED Office of Inspector General will be focusing on professional judgment compliance in [fiscal year 2020](#).)

- *Waivers of Institutional Charges:* Institutions that waive all or a portion of tuition, fees, or other institutional charges of a current payment period need not re-evaluate cost of attendance or make changes to Title IV awards on the basis of such changes.
- *Cash Management:* If an institution is unable to comply with the cash management regulations—including borrower requests for loan cancellations, excess cash requirements, and notice and authorization requirements—due to COVID-19 disruptions, it must document the reason(s) and retain the documentation in its records.
- *Common Origination and Disbursement (COD) Loan Periods:* Institutions that extend terms that begin on or before June 1, 2020 as a result of COVID-19 need not change loan period end dates in COD if the loan period was scheduled to end on the term end date.
- *Written Arrangements Between Domestic Institutions:* If an institution located in the United States or its territories is unable to continue providing an eligible program because of COVID-19, it may enter into a written agreement with another institution to enable students to continue their academic program while receiving Title IV assistance. (See also *Foreign Schools; Written Arrangements.*)
- *Institutional Participation:* A temporary cessation of educational instruction due to the COVID-19 pandemic will not cause a loss of institutional eligibility or participation.
- *Clery Act:* The 4/3 Updated Guidance clarifies the Clery Act’s “emergency notification” requirement as it applies to the COVID-19 pandemic.
  - Postsecondary institutions are not required to provide regular, on-going updates on COVID-19 or to proactively identify positive COVID-19 cases within the campus community to comply with the Clery Act’s emergency notification requirement.
  - Institutions are not required to provide emergency notifications regarding positive COVID-19 cases among individuals who are not attending classes, working, or residing on campus or to provide notifications to such individuals.
  - An institution may satisfy the emergency notification requirements by either (1) providing students and employees a single notification through the regular means of communicating emergency notifications or (2) creating a banner at the top of the institution’s homepage. This communication should provide information about COVID-19 and necessary health and safety precautions, as well as encourage the campus community to obtain information from health care providers, state health authorities, and the CDC’s COVID-19 website. Many institutions have already provided this type of information on their websites and we do not read this to require an additional notification.
  - The Department also indicated it will likely provide additional guidance to institutions about how to comply with campus security reporting and equity in athletics disclosures.
- *Reporting Deadlines:* Institutions having trouble meeting reporting deadlines for (1) Federal Pell Grant, Iraq and Afghanistan Service Grant, or TEACH Grant disbursement, adjustment,

or cancellation records, (2) final Federal Pell Grant payments, or (3) Direct Loan payment data, should contact their School Participation Division or use the Common Origination and Disbursement (COD) website, as applicable, to discuss their concerns or inquire about a possible extension. See the 4/3 Updated Guidance for details and instructions.

- *Campus-Based Aid Waivers:* The CARES Act eliminates the 25% institutional matching contribution requirement for federal SEOG and FWS funds. Institutions also may transfer up to 100% of their unexpended FWS allotment to their SEOG allotment. Per the 4/3 Updated Guidance, ED intends to issue further guidance regarding the allocation of campus-based program funding.
- *Supplemental Educational Opportunity Grants (SEOG):* The CARES Act allows an institution to use part of its SEOG allotment for emergency financial aid grants of up to the applicable maximum Pell Grant amount (\$6,195 for award year 2019-2020) to assist undergraduate and graduate students with unexpected expenses and unmet need as a result of COVID-19. Institutions may receive assistance from a scholarship-granting organization to aid in the application and disbursing process. The 4/3 Updated Guidance states that ED will provide guidance on the use of remaining SEOG allocations.
- *Federal Work Study (FWS):* The CARES Act codifies the Department's 3/5 Guidance on FWS. An institution can continue to pay FWS to enrolled students if the campus or student employer closes or moves classes online (provided the change occurred after the beginning of the term), the institution continues to pay essential faculty and/or staff (i.e., an institution need not continue to pay all employees), and the institution meets institutional wage share requirements. Pursuant to ED's 4/3 Updated Guidance, payments may be made in an amount equal to or less than the amount of FWS wages those students would have been paid had they been able to complete the FWS obligation. The flexibility applies to students who began their FWS job prior to COVID-19. Further, if an institution cannot comply with the 7% FWS community service requirement, including one project for tutoring children or family literacy, it must request a waiver explaining the reason for its inability to comply by contacting the Campus-Based Call Center at 1-800-848-0978.
- *Foreign Schools; Distance Education:* While Title IV of the HEA does not permit foreign schools to provide distance learning to U.S. students for the purposes of the Direct Loan program, the CARES Act allows an otherwise eligible program at a foreign institution to be offered via distance education if the applicable governmental authorities in the country in which the foreign institution is located have declared an emergency related to COVID-19. ED will provide guidance regarding associated reporting requirements. ED's guidance also confirms that students enrolled at a domestic institution and receiving instruction from a foreign institution via a consortium or written agreement (i.e., study abroad students) remain eligible for funds pursuant to Title IV of the HEA.
- *Foreign Schools; Written Arrangements:* While the Department's regulations state that programs offered in the U.S. by a foreign institution are not Title IV eligible, the CARES Act provides an exception allowing foreign institutions to enter into written arrangements with

U.S. institutions during the COVID-19 crisis. A public or nonprofit foreign institution may not enter into a written arrangement with a proprietary institution. However, a foreign for-profit graduate medical school, nursing school, or a veterinary school may enter into a written arrangement with a proprietary institution. ED will provide guidance regarding the associated reports schools must submit to ED.

## *Audits*

On March 10, 2020, the Department's Office of the Inspector General issued [Dear CPA Letter, CPA-20-01](#), which provides an exemption from the Department's site visit requirement for audits conducted using the [Guide for Audits of Proprietary Schools and for Compliance Attestation Engagements of Third-Party Servicers Administering Title IV Programs \(September 2016\)](#). The exemption applies to proprietary school audits of fiscal years ending between September 30, 2019 and December 31, 2019. For such audits, auditors must document how the alternative procedures achieved the intent of the site visit requirement.

On March 19, 2020, the [Office of Management and Budget \("OMB"\) issued a memorandum](#) recommending that federal agencies provide an extension of six months beyond the normal due date for audits under the Single Audit Act. ED's 4/3 Updated Guidance confirms the extension and indicates ED will provide additional guidance on the particulars of the extension for audits submitted by public and nonprofit institutions.

## *Student Privacy*

On March 12, 2020, the Department's Student Privacy Policy Office ("SPPO") [released guidance](#) to assist school officials working with public health officials during COVID-19 while also protecting the privacy of students' education records. SPPO's guidance document discusses the applicability of the Family Educational Rights and Privacy Act ("FERPA") to situations schools may face during the COVID-19 outbreak. Under FERPA's health or safety exception, if an institution determines that (1) there is an articulable and significant threat to the health or safety of the student or another individual and (2) certain parties need the personally identifiable information from education records to protect the health or safety of the student or another individual, then the institution may disclose that information to appropriate parties without first obtaining consent. The guidance document reiterates SPPO's longstanding position that the media are not "appropriate parties" because they generally do not have a role in protecting individual students or other individuals at the institution.

As in other areas discussed in this article, institutions must ensure they document compliance with FERPA. Specifically, if an institution uses the health or safety exception to make a disclosure, the institution must record in the student's education records the articulable and significant threat that formed the basis for the disclosure and the parties to whom information was disclosed.

On March 20, 2020, the SPPO released [FERPA and Virtual Learning Related Resources](#). This guidance provides links to relevant sections of the Department's [Security Best Practices Portal](#), including the [FSA Cyber Security Page](#), and previous guidance documents including "[Protecting](#)

[Student Privacy While Using Online Educational Services: Requirements and Best Practices](#)” and [“Protecting Student Privacy While Using Online Educational Services: Model Terms of Service”](#).

On March 30, 2020, the Acting Director of the SPPO conducted a [webinar addressing commonly asked questions](#) related to the challenges of complying with student privacy laws during COVID-19 and presenting ten scenarios highlighting privacy best practices and considerations when adopting distance learning approaches. For instance, SPPO confirmed that, per FERPA’s school official exception, schools may use video conferencing or other virtual learning software to hold classes virtually.

## ***Civil Rights***

On March 17, 2020, the Department’s Office for Civil Rights (“OCR”) released a [webinar](#) for schools utilizing online learning during the COVID-19 outbreak regarding accessibility for students with disabilities. OCR reminds institutions that, under Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act, a person with a disability must be afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same programs and activities as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use. As institutions move programs to a distance modality, OCR recommends that institutions assess whether their online learning systems are sufficiently accessible by employing both automated checkers and manual testing.

In addition, OCR published a [Fact Sheet](#) for education leaders on how to protect students’ civil rights as school leaders take steps to keep students safe and secure. OCR confirms that school officials have discretion to make educational decisions based on local health needs and concerns. As school leaders respond to evolving conditions related to COVID-19, OCR instructs them to be mindful of the requirements of Section 504 of the Rehabilitation Act, Title II of the Americans with Disabilities Act, and Title VI of the Civil Rights Act, to ensure that all students are able to study and learn in an environment that is safe and free from discrimination.

ED’s 4/3 Updated Guidance acknowledges the difficulties institutions are encountering in moving to an online modality, and appears to provide flexibility to such institutions:

*Institutions should not decline to provide distance instruction, at the expense of most students, to address matters pertaining to accommodations for students with disabilities. Rather, institutions must make decisions that take into consideration the health, safety, and well-being of all their students and staff. Additionally, the Department understands that, during this national emergency, postsecondary institutions may not be able to provide services in the same manner as they typically would for the rest of the academic year.*

## **Relief to Individual Student Loan Borrowers**

The CARES Act extended the President’s announced suspension of payments and interest on federally-held student loans until September 30, 2020, and the 4/3 Updated Guidance further details the relief and support available to individual Title IV borrowers. Holders of non-federally held Title



IV loans (i.e., Perkins loans and privately held FFEL loans) may voluntarily provide similar relief. The Department also has provided a [resource page](#) for individual borrowers.

Additionally, the Department suspended collection on defaulted, federally-held loans, including wage garnishments and offsets, and will not penalize borrowers in repayment arrangements or rehabilitation programs for missed payments through September. Collection agencies are also instructed to cease collection activities on defaulted, federally-held loans through September 30, 2020.

The 4/3 Update Guidance authorizes institutions to grant limited forbearances for Perkins Loan borrowers and permits similar accommodations for payment and collection as apply to Direct Loans.

### **GI Bill Benefits Extended for Student Veterans**

On March 21, 2020, President Trump signed into law a [bill authorizing the Secretary of Veterans Affairs to allow veterans' GI Bill benefits to continue](#) when previously authorized in-person education programs are converted to distance education because of an emergency, namely COVID-19. The law gives the Department of Veterans Affairs (“VA”) temporary authority to continue GI Bill benefits for converted programs, including monthly housing allowances and education benefits payments, until in-person classes resume after the pandemic.

Subsequently, the VA [has published guidance](#) regarding COVID-19 confirming that an institution that converts an approved residence training course to an online training modality need not make submissions to the relevant agencies when the modality conversion is the only change. However, for students who become ill due to COVID-19, the current law does not allow the VA to continue payments beyond the last day of attendance.

### **Institutions Should Keep Accreditors Informed**

As institutions transition online or make changes to their academic calendar, accreditors may require the filing of a notification or an application. Although many of these processes have been waived or relaxed, it is critical that institutions review the relevant accrediting agency guidance and communicate with their accreditor regarding institutional and programmatic changes made to address COVID-19, including changes to method of instruction or academic calendar. The Department’s rules requiring institutions to notify and potentially seek approval from their institutional accreditor for such changes have been relaxed but not eliminated.

For up-to-date information from institutional accreditors, follow the links below:

- [Accrediting Bureau of Health Education Schools \(ABHES\)](#)
- [Accrediting Commission for Community and Junior Colleges Western Association of Schools and Colleges \(ACCJC WASC\)](#)
- [Accrediting Commission of Career Schools and Colleges \(ACCSC\)](#)
- [Accrediting Council for Continuing Education & Training \(ACCET\)](#)
- [Accrediting Council for Independent Colleges and Schools \(ACICS\)](#)
- [Council on Occupational Education \(COE\)](#)

- [Distance Education Accrediting Commission \(DEAC\)](#)
- [Higher Learning Commission \(HLC\)](#)
- [Middle States Commission on Higher Education \(MSCHE\)](#)
- [New England Commission of Higher Education \(NECHE\)](#)
- [Northwest Commission on Colleges and Universities \(NWCCU\)](#)
- [Southern Association of Colleges and Schools Commission on Colleges \(SACSCOC\)](#)
- [Western Association of Schools and Colleges Senior College and University Commission \(WSCUC\)](#)

## **Document and Communicate**

With the rapidly changing landscape brought on by COVID-19, institutions should document institutional decisions relating to student services, academic programs, and Title IV aid. In particular, the Department encourages institutions to document, as contemporaneously as possible, any actions taken as a result of COVID-19, including actions contemplated by the Department's COVID-19 guidance documents. Institutions should then consider their obligation to communicate these decisions to the appropriate federal, state, and local agencies. Failure to document and communicate steps taken to address COVID-19 may result in unexpected liabilities or regulatory action in the future.

The Department has emphasized that it will provide flexibility where possible, and that its guidance to date does not necessarily reflect all possible approaches. Institutions can contact the Department to argue for alternative lawful approaches other than those stated in ED's guidance, argue for a modification or rescission of the terms of the guidance, or both. Instructions for submitting a request or comment are included in the 4/3 Updated Guidance, and we advise institutions to work with their counsel in drafting any such requests or comments.

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We at Powers are diligently reviewing the announcements from the Department, Congress, accreditors, and industry groups. This article is provided as a summary of these announcements and is not intended to provide legal advice. For specific questions or for assistance drafting comments to ED, please contact the Powers attorneys or professionals with whom you work (listed below):

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