

The CARES Act: Key Funding Provisions for Institutions of Higher Education

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Holland & Knight Alert

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Highlights

- The recently enacted Coronavirus Aid, Relief, and Economic Security Act (CARES Act) includes several sources of funds for postsecondary educational institutions.
- This Holland & Knight alert addresses some of the major funding and relief provisions pertaining to institutions of higher education.

The federal government enacted the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) on March 27, 2020. The CARES Act includes several sources of funds for institutions of higher education (IHEs), including the following:

Higher Education Emergency Relief Fund

The Higher Education Emergency Relief Fund is available to IHEs to prevent, prepare for and respond to the novel coronavirus (COVID-19). H.R. 748 § 18004(a). An "institution of higher education" for purposes of fund eligibility is an accredited and certain state licensed and pre-accredited public or nonprofit postsecondary degree-granting institutions. 20 U.S.C. § 1001(a). A total of 90 percent of available funds will be disbursed to IHEs using the preexisting Title IV distribution system. See H.R. 748 § 18004(a)(1). In addition, 7.5 percent of the funds are reserved for minority-serving IHEs. See H.R. 748 § 18004(a)(2). The remaining 2.5 percent is reserved for grants for small IHEs that have the greatest needs due to COVID-19. See H.R. 748 § 18004(a)(3).

In exchange for funding, IHEs must use no less than 50 percent of funds received "to provide emergency financial aid to student borrowers who have unanticipated expenses associated with the disruption of learning on campus." H.R. 748 § 18004(c). IHEs may also invest in distance learning technology and the associated costs for implementing new technologies. *Id.* Funding may *not* be used for: 1) payments to contractors designed for pre-enrollment recruitment activities, 2) endowments and 3) capital outlays associated with facilities related to athletics, sectarian instruction or religious worship. *Id.* The IHE 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 H.R. 748 § 18006.

Paycheck Protection Program

The Paycheck Protection Program (PPP) makes available forgivable loans for payroll and select other items to for-profit and nonprofit (including postsecondary educational) institutions described in Section 501(c)(3) of the Code that are exempt from taxation under Section 501(a) of the Code with 500 or fewer employees, meet the U.S. Small Business Administration's size standards (if applicable) and were operational on March 1, 2020. "Affiliation rules" apply to determine the employee count, which may require subsidiaries to add parent organizations, provided that certain religious institutions are exempt. Even for-profit businesses owned by a nonprofit organization may be eligible for loans under the PPP. The loans made under this program will be fully forgiven if three requirements are met: 1) loans are used exclusively for their intended purpose, 2) payroll expenses are fully offset for no more than eight weeks, and

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3) loan recipients retain employees at the same salary as before the pandemic. If businesses (including IHEs) do not meet the employee retention or salary requirements listed above, businesses have until June 30, 2020, to restore full-time employment and salary levels for any changes made between Feb. 15, 2020, and April 26, 2020.

Assistance for Mid-Size Nonprofits Program

The Assistance for Mid-Size Nonprofits Program authorizes lenders to make available loans with no higher than a 2 percent interest rate and no principal or interest payments due for six months to U.S. nonprofit (including postsecondary educational) institutions that have between 500 and 10,000 employees, including a majority in the U.S. and significant operations in the U.S. The loan must be used to retain at least 90 percent of its workforce at full compensation until Sept. 30, 2020. The institution must certify that it intends to restore at least 90 percent of the workforce that it had as of Feb. 1, 2020, within four months of the end of the COVID-19 emergency and must agree to certain limitations on compensation to highly compensated employees.

Disaster Assistance Loans

Disaster Assistance Loans of up to \$25,000 unsecured or \$2 million with collateral at a 2.75 percent interest rate are available to any size nonprofit institution (including postsecondary educational institutions). The nonprofit must have suffered a substantial economic injury as a result of COVID-19 or an injury that results in the inability of the nonprofit to meet its obligations as they mature, to pay its ordinary and necessary operating expenses, or to market, produce, or provide a product or service ordinarily marketed, produced or provided by the nonprofit. "Small" nonprofits are entitled to an advance of up to \$10,000 within three days of application, which need not be repaid, even if the loan is denied.

COVID-19 Pandemic Education Relief Act

The COVID-19 Pandemic Education Relief Act of 2020 (the Pandemic Education Relief Act) is located within Subtitle B of the CARES Act. As a threshold matter, provisions that apply to higher education in Subtitle B are applicable only to proprietary IHEs or postsecondary vocational schools (for-profit IHEs). See H.R. 748 § 3502 (defining an institution of higher education as having the same definition codified in 20 U.S.C. § 1002). The definition of IHE in 20 U.S.C. 1002 explicitly excludes public or other nonprofit institutions. See 20 U.S.C. § 1002(b)(1)(C). Accordingly, IHEs (depending on their nature) may only qualify for funds under the Higher Education Emergency Relief Fund or for relief under the Pandemic Education Relief Act; they are not eligible for funds/relief under both sections of the CARES Act.

The Pandemic Education Relief Act provides certain Higher Education Act (HEA) funding relief. Some relief provisions allow for-profit IHEs to not pay or repay certain funds received under the HEA. For example, for-profit IHEs do not need to match federal contributions to campus-based programs authorized pursuant to Part 3 of Part A and Part C of Title IV of the HEA. See H.R. 748 § 3503. This requirement has been waived. *Id.* For-profit IHEs also do not need to repay grants or loans received under Title IV (except funds given pursuant to Part C of Title IV) if the student recipient of those funds withdraws from the for-profit IHE during the COVID-19 pandemic. See H.R. 748 § 3508. For-profit IHEs that receive loans under Part D of Title III (which provides financing to Historically Black Colleges and Universities) may request a deferment of all loan payments during the period of the COVID-19 pandemic, during which period the U.S. Department of Education will make all scheduled principal and interest payments. See H.R. 748 § 3512.

Additional Relief Provisions

Other relief provisions allow for-profit IHEs to reallocate certain Title IV funds to aid impacted students. For-profit IHEs may take funds received pursuant to Part 3 of Part A of Title IV and reallocate them for emergency financial aid grants to students "for unexpected expenses and unmet financial need as the result of [COVID-19]." See H.R. 748 § 3504. For-profit IHEs may also reallocate funds received under Part C of Title IV to work-study students who are unable to fulfill their work-study obligations for all or part of an academic year due to COVID-19. See H.R. 748 § 3505.

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Additional relief of both types may be realized in the future, as the CARES Act authorizes the Secretary of Education to: 1) further modify permitted uses of funds for grants awarded under certain portions of the HEA and 2) modify any federal share or other financial matching requirement for a grant awarded under certain portions of the HEA. See H.R. 748 § 3518.

Next Steps

IHEs should continue to monitor U.S. Department of Education guidance about applicable provisions in the CARES Act and for any further modifications. For more information or assistance on this topic, please contact the authors or another member of Holland & Knight's [Education Team](#).

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