

Higher Education Emergency Relief Funding (HEERF)

Sec. 18004 of the CARES Act (P.L. 116-136)

As of June 17, 2020

CGS members may also refer to a CGS document [Financial Assistance Provisions in the CARES Act that May Impact Graduate Students](#) dated April 13 for additional related information.

Background

The CARES Act (P.L. 116-136) included approximately \$14 billion in grant relief for students and institutions of higher education (IHEs). Broadly speaking, 50% of the funding is to be dispersed as emergency grant aid to students, and 50% is to be allocated to IHEs to help cover costs related to transitioning to online education, technology, and student housing and food needs.

The first \$6.3 billion of HEERF was made available for schools to apply for in early April and was strictly to be allocated as emergency grants to students. On May 6, the department issued guidance on [reporting requirements](#) for IHEs to follow regarding emergency grant aid.

The second portion of HEERF was made available in mid-April, this time to support IHEs. An IHE could apply for its share of HEERF funding only if it first submitted the proper certification and application for the student emergency grant portion (see: Department of Education's [website](#) for more information). Each IHE's total share of HEERF is determined by a [formula](#) that takes into account the number of full-time students and Pell Grant recipients.

On May 21, the Department of Education released a statement released a [new statement](#) in reference to an earlier [FAQ guidance document](#) for institutions of higher education on the CARES Act emergency grant aid to students. The original guidance stated that "Only students who are or could be eligible to participate in programs under Section 484 in Title IV...may receive emergency financial aid grants." This raised significant concern from the higher education community, given that many students do not have a FAFSA on file (and therefore would make it difficult for an institution to determine which students are Title IV eligible). **The Department's updated statement explains that the earlier guidance was "preliminary" and "lack[s] the force and effect of law." Stakeholders await further clarification from the Department on what this will mean for other student populations, including international students, undocumented students, and those with DACA status.**

In addition, the Congressional Research Service (CRS) released a memorandum on the eligibility requirements at the request of Senator Patty Murray (D-WA). **CRS, a nonpartisan congressional agency, notes Secretary DeVos' guidance could be invalidated by a court, because "the Secretary did not announce the interpretation through a notice-and-comment rulemaking process and because the Secretary's interpretation is not a particularly persuasive reading of the statute."**

Update (June 17, 2020)

On June 15, U.S. District Court Judge Thomas Rice in Washington State granted a preliminary injunction that allows institutions in the state to give the aid to certain students who are not eligible for regular student aid. However, the temporary injunction does not remove the ban on undocumented students receiving the grants. This ruling only applies to institutions in Washington State. On June 17, U.S.

District Judge Yvonne Gonzalez Rogers ruled in favor of [California Community Colleges](#) granting a preliminary injunction against the Department of Education’s temporary April guidance. Her ruling extended beyond Judge Rice’s to allow undocumented students to receive the aid, noting she was not persuaded that the argument by the Department of Education would exclude undocumented students from the relief funds. This ruling only applies to students attending California community colleges.

On June 17, the Department of Education published the [new interim rule](#) related to the CARES Act emergency grant aid which reasserts the guidance Secretary of Education Betsy DeVos [issued in April](#). The rule defines a “student” as an individual who is, or could be, eligible under Section 484 of the Higher Education Act (HEA), to participate in programs under Title IV of the HEA. This would restrict colleges from dispersing funds from the emergency aid program to undocumented students and those who do not qualify for federal student aid under Title IV. The rule will not be retroactive. The Department of Education will accept public comments until July 17, 2020.

Senator Tim Kaine (D-VA) has introduced the Coronavirus Relief Flexibility for Students and Institutions Act, [S. 3947](#), to fix several implementation issues with the higher education emergency relief fund in the CARES Act by providing institutions of higher education and students with the increased flexibility Congress intended.

Frequently Asked Questions

Q: Are graduate students eligible to receive emergency grant aid from the CARES Act Higher Education Emergency Relief Fund (HEERF) (Sec. 18004)?

A: Yes. Although original the original [Department of Education FAQ document stated](#), “only students who are or could be eligible to participate in programs under [Section 484 in Title IV](#) of the Higher Education Act of 1965, as amended (HEA), may receive emergency financial aid grants,” the Department of Education released an [updated statement](#) on May 21 noting that “the Department will not initiate any enforcement action based solely on these statements because they lack the force and effect of law.”

Q: Can graduate students who do not have a current FAFSA on file receive HEERF grant aid?

A: Yes. The Department of Education’s [updated statement](#) regarding HEERF eligibility clarifies the Department will not enforce the Title IV eligibility requirements for CARES grant aid to students. This update allows institutions to circumvent the FAFSA requirement in the original [FAQ document](#) section that states “Students who have not filed a FAFSA but who are eligible to file a FAFSA may also receive emergency financial aid grants.” The CARES Act statutory language does not specify that students must be Title IV eligible to receive the grants.

However, the retroactive benefit of the Department of Education’s clarification in its May 21 statement is not clear across the board. Many institutions have already allocated its share of emergency grant aid to students. Institutions may still be hesitant to give the money to students who do not have a FAFSA on file, given that the department noted in its May 21 statement it “continues to consider the issue of eligibility for HEERF emergency financial aid grants under the CARES Act and intends to take further action shortly.” Without additional formal guidance, financial aid offices may feel this is still open to interpretation.

Q: Can international students studying at a U.S. institution receive HEERF grant aid?

A: No. International students are still not eligible according to the Department of Education’s interpretation 8 U.S.C. § 1611 in the [updated guidance](#), which bars eligibility for Federal public benefits including such grants.

Q: Can undocumented students, including those with DACA status, receive HEERF grant aid?

A: No. Based on the Department of Education’s [updated guidance](#), undocumented students and those with DACA are not eligible. A [recent report](#) indicates that 13% of all DACA-eligible students at the postsecondary level are enrolled in graduate programs (approximately 28,000 students).¹ There is current debate among policymakers about whether the CARES Act intended to make the HEERF grant aid available to DACA recipients. While the statutory language does not require Title IV eligibility in order for a student to receive grant funding, the Department of Education has interpreted it as such in their subsequent guidance and implementation.

However, the Congressional Research Service’s memorandum on the eligibility requirements notes DeVos’ guidance could be invalidated by a court. The memo states the Secretary’s determination could be invalidated because “the Secretary did not announce the interpretation through a notice-and-comment rulemaking process and because the Secretary’s interpretation is not a particularly persuasive reading of the statute.”

Q: Can students who receive their education online receive HEERF grant aid?

A: It depends. Per the Department of Education’s [HEERF FAQ document](#), “students who were enrolled exclusively in an online program on March 13, 2020...are not eligible for emergency financial aid grants.” The key word here is *exclusively*. The formula that the Department of Education uses to calculate the distribution of funds to IHEs excludes students who were enrolled exclusively in distance education courses at the time the President declared the novel coronavirus disease outbreak (March 13, 2020). “Additionally, the emergency financial aid grants to students are for expenses related to the disruption of campus operations due to the coronavirus, and students who were enrolled exclusively in online programs would not have expenses related to the disruption of campus operations due to coronavirus.”

Q: Is CARES Act emergency grant aid to students treated as taxable income?

A: No. On May 7, the Internal Revenue Service (IRS) stated in an [FAQ](#) that “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, such as unexpected expenses for food, housing, course materials, technology, health care, or childcare, are qualified disaster relief payments under section 139 of the Internal Revenue Code. This grant is not includible in your gross income.”

¹ Feldbaum, M., Hubbard, S., Lim, A., Penichet-Paul, C., and Siegel, H. (April 2020). Undocumented students in higher education: how many students are in U.S. colleges and universities, and who are they? Retrieved from: <https://www.presidentsimmigrationalliance.org/wp-content/uploads/2020/04/2020-04-16-NAE-PA-Report-Undocumented-Students-in-Higher-Education.pdf>

Regulatory Recommendations/Requests

1. As an initial first step, CGS and its higher education colleagues have asked the Department of Education to provide additional guidance to further clarify previously released guidance about the HEERF program in the CARES Act, namely the language regarding having a current FAFSA on file.

Legislative Recommendations/Requests

2. CGS and its higher education colleagues request a legislative technical fix to the CARES Act statutory language to clarify that emergency grant aid to students is not limited to Title IV eligible students.

Additional Resources

- U.S. Department of Education [CARES Act: Higher Education Emergency Relief Fund](#)
- IRS [FAQs: Higher Education Emergency Relief Fund and Emergency Financial Aid Grants under the CARES Act](#)