



Robert T. Kent

Of Counsel
Cleveland
517.208.1460
rkent@bricker.com



Jeff Knight

Of Counsel
Columbus
614.227.2346
jknight@bricker.com

DOE releases additional \$6.3 billion for higher education institutional costs, provides FAQ guidance

April 24, 2020

Higher Ed Emergency Relief Fund – Institutional Share

On April 21, 2020, the Department of Education (DOE) released \$6.3 billion dollars in connection with the Higher Education Emergency Relief Fund, part of over \$30 billion in grant funding to the education sector included as part of the CARES Act.

The newly released funds are provided to institutions to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus. The funds are allocated based on a formula found within the CARES Act.

Institutions are required to sign a certification and agreement in order to receive access to the funds. In order to be eligible for the funding, institutions must first execute the student emergency financial aid certification and agreement.

The new certification and agreement provides institutions with discretion in determining how to allocate and use the institutional grant funds, requiring “that funds will be spent only on those costs for which [the institution] has a reasoned basis for concluding such costs have a clear nexus to significant changes to the delivery of instruction due to the coronavirus.”

The DOE permits an institution to use the funds “to reimburse itself for costs related to refunds made to students for housing, food, or other services that [the institution] could no longer provide, or for hardware, software, or internet connectivity that recipient may have purchased on behalf of students or provided to students.” All costs must have been incurred on or after March 13, 2020, the date of the proclamation of national emergency. The funds must “to the greatest extent practicable” be used within one year from the date when the certification and agreement is executed.

The certification and agreement includes quarterly reporting requirements, as well as an acknowledgment that the DOE may require additional reporting in the future related to “the amount of reimbursements to the [institution] for costs related to refunds made to students for housing, food, or other services that [the institution] could no longer provide, and describing any internal controls [the institution] has in place to ensure that funds were used for allowable purposes and in accordance with cash management principles.”

The new certification and agreement includes additional terms and conditions also found within the previous agreement, including a requirement that institutions do not discriminate in disbursements of the funds, acknowledgment of potential liability under the False Claims Act, and application of all other applicable state and federal laws and regulations.

Emergency Financial Aid Grant Frequently Asked Questions

The DOE also published a frequently asked questions (FAQ) document providing guidance specific to student emergency financial aid grants made available on April 9, 2020. The FAQ document answers some questions that have been on the minds of institutions in the previous weeks but leaves many unanswered.

a. No reimbursements, unless . . .

The FAQs make the DOE’s position clear that the emergency financial aid grants may not be used to reimburse institutions for refunds provided to students for room and board, tuition and other fees (such as activity fees). Institutions also cannot use the student portion of the grant funds to reimburse themselves for information technology hardware and other related equipment provided to students for distance learning education. (Such reimbursement is allowable under the newly-released institutional grant funds.) It is important to note that the DOE is allowing institutions to reimburse themselves for “institutionally funded emergency grants to students” provided as a result of COVID-19. Such reimbursement is only available for qualifying grants made on or after March 27, 2020, the date the CARES Act was enacted.

b. Institutions cannot use the funds to pay student workers

DOE made it clear that institutions may not use student emergency financial

aid grant funds to reimburse the institutions for payments made to student workers who have been unable to work during the COVID-19 crisis. The DOE reminded institutions of a separate portion of the CARES Act that withdraws the federal work study institutional match requirement under certain circumstances.

c. Institutions may not just apply the financial aid grants to student accounts
The DOE made it very clear that it expected financial aid grants to be made directly to students and that such funds may not be used to satisfy a student's outstanding account balance. It advised that "[i]nstitutions may provide emergency financial aid grants to students using checks, electronic transfer payments, debit cards, and payment apps that adhere to the Department's requirements for paying credit balances to students. The disbursement of the emergency financial aid grant to the student must remain unencumbered by the institution; debts, charges, fees, or other amounts owed to the institution may not be deducted from the emergency financial aid grant."

d. DACA students may be ineligible

The DOE, through [the FAQs](#) as well as [Secretary DeVos' accompanying remarks](#), made clear that "[o]nly 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." Practically speaking, this excludes undocumented students, including those protected by the Deferred Action for Childhood Arrivals program, from receiving the emergency monetary grants. Questions remain, however, as the CARES Act does not mention – much less condition – emergency aid eligibility on federal student aid eligibility. Additionally, the DOE's recently-issued Funding Certification and Agreement specifically states that the secretary "does not consider these individual emergency financial aid grants to constitute federal financial aid under Title IV of the HEA." Notwithstanding these questions, the DOE doubled-down on its position, issuing [a statement](#) saying that "[t]he CARES Act makes clear that this taxpayer funded relief fund should be targeted to U.S. citizens, which is consistently echoed throughout the law."

e. Questions left unanswered

While the DOE reiterated the post-award institutional reporting criterion found within the previous certification and agreement, it left unanswered questions regarding specific information it would like institutions to report. Instead, the department acknowledged it would provide notice in the Federal Register at a subsequent date that includes instructions on reporting requirements.

The DOE also did not define its expectations as to efforts institutions are

required to take to continue to pay employees and contractors “to the greatest extent practicable.” The only guidance provided in that regard was that institutions may not use the emergency financial aid grants to students to pay employees and contractors.

Institutional Share Frequently Asked Questions

On April 22, 2020, the DOE released an [FAQ guide](#) regarding the institutional portion of the relief fund. Below are a few highlights from the guidance:

a. Reimbursement is allowed

The FAQs make it clear that institutions may use the institutional portion of the relief funds to reimburse themselves for refunds provided to students for room and board, tuition and other fees as a result of significant changes to the delivery of instruction, including interruptions and instruction, due to the coronavirus. The DOE also allows institutions to pay to reimburse themselves for the purchase of laptops, hotspots, or other information technology equipment and software purchased to enable students to participate in distance learning as a result of a significant change to the delivery of instruction due to the coronavirus.

b. Students first

The FAQs again acknowledge the requirement that institutions execute the certification and agreement for the student grant funds prior to executing the certification and agreement for the institutional funds. The DOE also encourages institutions to use the institutional portion for direct grants to students rather than institutional expenses.

c. Keep detailed records

In its guidance, the DOE has been consistent in its expectation that institutions will keep detailed records of how they are expending all funds received under the relief fund. While the DOE has not yet provided specifics as to what they will expect, the FAQs acknowledge an intent for the DOE to publish instructions for institutions on these reporting requirements in the Federal Register.

d. Future costs are allowed

The FAQs note that use of the funds to provide grants to students for future academic terms is allowed. [The DOE notes](#) that “as long as awarding scholarships and providing payment for future academic terms are costs associated with significant changes to the delivery of instruction due to the coronavirus or, if provided to students in the form of emergency financial aid, offer expenses related to the disruption of campus operations due to coronavirus, such uses are allowable.”

Institutions may access these FAQs and other information regarding the higher

education emergency relief fund at the U.S. [Department of Education's Office of Post-Secondary Education website](#).