

Insights

THE CARES ACT: IMPORTANT REMINDERS REGARDING STUDENT GRANTS FOR INSTITUTIONS OF HIGHER EDUCATION

May 04, 2020

The Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) provides several sources of funding for Institutions of Higher Education (“IHEs”), including about \$14 billion for post-secondary institutions through the Higher Education Emergency Relief Fund (“HEERF”). Under Section 18004(c) of the CARES Act, at least 50 percent of funds (or \$6.279 billion) awarded to institutions must be used to provide direct emergency aid to students, in the form of grants for expenses related to the cost of attendance, like for food, housing, course materials, technology, health care, and child-care expenses related to the Coronavirus disruptions. While these grants will provide important aid to students, Colleges and Universities administering and distributing the grants may face potential risks and liabilities that can be reduced through prudent anticipatory actions.

To receive funds for student grants, IHEs must sign Funding Certification Agreements pledging to, among other things, distribute funds for their stated purpose and consistently with all applicable laws, including nondiscrimination laws. While IHEs retain discretion to determine the amount of each individual emergency financial aid grant to students, the Department of Education (“DOE”) has made clear that the grants are intended to help needy students, and has recommended that grant amounts under the bill track the statutory formula for determining maximum annual Pell grant awards. The plaintiffs’ bar will undoubtedly scrutinize these decisions as well as the administration of the grant funds. To preemptively address potential federal statutory claims, as well as potential civil litigation claims by students or classes of students, IHEs can take the following non-exhaustive steps:

1. Avoid making false statements or distributing false documentation with regard to the application for emergency funds, or in connection with accepting, administering or reporting on funds under the CARES Act. If for example, IHEs overstate enrollment, provide false or misleading information in their periodic reporting requirements under the Funding Agreements, or use funds for any reason except their stated purpose, Colleges and Universities may be subjected to claims by whistleblowers under the False Claims Act or liability under the False Statement Statute.

2. Rigorously comply with all laws and regulations applicable to the emergency grant under the CARES Act and Funding Agreements. Because the statute and Funding Agreements incorporate the Guidelines to Agencies on Government-wide Debarment and Suspension, if IHEs fail to comply with all of the laws and regulations applicable to CARES Act grant, it is possible for the Government to debar or suspend the institution, or certain individuals from the institution, from further participation in the program, as well possible debarment and suspension from the receipt of other federal grants.
3. Exercise care in formulating any written policies or pronouncements concerning CARES Act grants, the criteria for awarding grants and the likelihood that any student will receive a grant. Plaintiffs may claim such policies created contractual obligations (either directly or as third-party beneficiaries) for IHEs to give them grants or administer the program in a particular way. Any policies and statements should emphasize the extensive discretion the Act gives to IHEs in determining which individual students will receive grants and the amount of such grants.
4. Adhere to nondiscrimination requirements in the receipt of funds, in accordance with state and federal laws. To the extent possible, IHEs should utilize the expertise of their respective financial aid offices to assess the needs of particular students. Additionally, it may be advisable to conform to DOE's recommended guidelines on individual funding thresholds wherever possible.

Importantly, not all students are eligible to receive grants under the bill. Institutions with questions about these suggested measures can contact the Higher Education team for guidance.

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