

U.S. Department of Education issues new guidance related to COVID-19 and CARES Act regulatory flexibilities

May 22, 2020

On May 15, 2020 the U.S. Department of Education (ED) published an [electronic announcement](#) to provide guidance on regulatory flexibilities set forth in the Coronavirus Aid, Relief, and Economic Security (CARES) Act and to update and expand on prior guidance related to federal student financial aid requirements in light of COVID-19. ED's prior guidance was issued on [March 5](#) and on [April 3](#). Our client advisory on the March 5 guidance is available [here](#). This client advisory summarizes ED's guidance on distance education and certain other selected federal student financial aid matters, and it provides a chart that outlines the CARES Act provisions regarding regulatory flexibility.

Distance education

In its March 5 guidance related to COVID-19 developments, ED provided broad approval to institutions to use online technologies to accommodate students on a temporary basis, without the need to obtain ED approval where such approval would otherwise be required. The March 5 guidance indicated that the flexibility would apply only to a program during a payment period that overlaps with March 5 (the date of the electronic announcement) or the following payment period. On April 3 ED issued guidance that limited this flexibility to payment periods that overlap with ED's March 5 guidance or that begin on or between March 5 and June 1, 2020. In the May 15 guidance, ED expands the broad approval for the use of distance education to include payment periods that overlap March 5, 2020 or that begin on or between March 5, 2020 and December 31, 2020.

Financial statement and compliance audit requirements

The Higher Education Act and ED implementing regulations require an institution to submit annually audited financial statements and a compliance audit of its administration of the federal student financial aid programs. Not-for-profit and public institutions are required to submit the audits within nine months after the institution's fiscal-year end. For-profit institutions are required to submit the audits within six months after the institution's fiscal year-end. In the May 15 guidance, ED extends the deadlines by six months. ED's guidance is consistent with a March 19, 2020 Office of Management and Budget (OMB) [memorandum](#) that directed awarding agencies, in their capacity as cognizant or oversight agencies for audits, to allow certain recipients and subrecipients to delay the completion and submission of the Single Audit reporting package

to six months beyond the normal due date. The OMB extension is available to recipients and subrecipients that have not yet filed their Single Audits with the Federal Audit Clearinghouse as of March 19 and that have fiscal year-ends through June 30, 2020.

Accreditors

In the May 15 guidance, ED extends through December 31 the flexibilities provided in a [March 17 guidance](#) permitting accreditors to conduct virtual site visits.

CARES Act regulatory flexibilities

The CARES Act provides a number of regulatory flexibilities. The following chart summarizes certain CARES Act provisions and related May 15 guidance.

Section title and description	Additional information in May 15, 2020 electronic announcement
<p>3503. Campus-based aid waivers</p> <p>Institutions making awards under Federal Supplemental Educational Opportunity Grants (FSEOG) and Federal Work-Study (FWS) programs for award years 2019–20 and 2020–21 do not have to provide a nonfederal share to match awarded federal funds during those award years.</p> <p>"Private for-profit organizations" cannot take advantage of the waiver with respect to their payment of the nonfederal share of FWS program funds (HEA § 442; 20 U.S.C. § 1087–53(c)(3)).</p> <p>Institutions may transfer up to 100 percent of unexpended allotted FWS funds to their allotted FSEOG funds, but may not transfer any funds in the opposite direction (i.e., no unexpended allotted FSEOG funds may be transferred to their allotted FWS funds).</p>	<p>An institution may reimburse itself from the FWS allocation for the nonfederal portion of wages paid to students on or after March 13, 2020.</p> <p>An institution may reimburse itself from the FSEOG allocation for the nonfederal portion of FSEOG awards contributed through a fund-specific match for all disbursements of FSEOG made on or after March 13, 2020.</p>
<p>3504. Use of supplemental educational opportunity grants for emergency aid</p> <p>Institutions may use "any amount" of FSEOG fiscal year funds "to award, in such fiscal year, emergency financial aid grants to assist undergraduate or graduate students for unexpected expenses and unmet financial need as the result of a qualifying emergency."</p> <p>"In determining eligibility for and awarding emergency financial aid grants under this section," institutions may:</p> <ul style="list-style-type: none"> • "Waive the amount of need calculation" under HEA § 471 (20 U.S.C. § 1087kk). • Allow an affected student to receive funds "in an amount that is not more than the maximum Federal Pell Grant for the applicable award year" • Contract with a scholarship-granting organization to disburse such allocated funds to students. <p>Emergency aid provided under this section "shall not be treated as other financial assistance" for purposes of need calculation under HEA § 471.</p>	<p>Eligibility for grants "is determined by each institution within the parameters established in the CARES Act," i.e., grants must be for unexpected expenses and unmet financial need as the result of a qualifying emergency.</p> <p>Institutions may contract with scholarship-granting organizations to accept applications from or disburse FSEOG Emergency Aid Grants to students, provided students receive the entire amount of the grant and no FSEOG funds are used to pay the scholarship-granting organization.</p> <p>FSEOG awarding rules are waived for the purpose of making FSEOG Emergency Aid Grants, and FSEOG Emergency Aid Grants are not considered Estimated Financial Assistance for purposes of calculating need for federal student financial aid.</p>

Section title and description	Additional information in May 15, 2020 electronic announcement
<p>3505. Federal Work-Study during a qualifying emergency</p> <p>Institutions may continue to make FWS payments "for the period of time (not to exceed one academic year) in which affected students were unable to fulfill [their] work-study obligation for all or part of such academic year due to such qualifying emergency."</p> <p>Payments may be equal to or less than the amount of wages students otherwise would have been paid under FWS and can be paid as a one-time grant or in multiple payments.</p> <p>Such payments are available to students who were already work-study eligible and who were already completing their obligations to receive FWS funds.</p> <p>Includes definition of "affected work-study students."</p>	<p>No additional guidance in the May 15, 2020 electronic announcement.</p> <p>ED's March 5 and April 3 guidance statements provide more details regarding FWS payments. For students enrolled and performing FWS at a campus that must temporarily cease providing instruction due to COVID-19, for a FWS student who is employed by an employer that temporarily or permanently closes as a result of COVID-19, or for students quarantined and unable to travel to campus or their jobsite, the institution may continue paying the student Federal Work-Study wages during that cessation. Graduate students who are paid FWS wages on salary may continue to be paid for the remainder of the term if the institution is also paying its faculty and staff during that period.</p> <p>The flexibility applies only to students who began their FWS job prior to the declaration of the national emergency and may not exceed one academic year. Institutions should document (as contemporaneously as feasible) that the COVID-19 disruption was the reason the student received FWS funds without documentation of hours worked.</p>
<p>3506. Adjustment of subsidized loan usage limits</p> <p>"[A]ny semester (or the equivalent) that the student does not complete due to a qualifying emergency" will be excluded from a student's period of enrollment for purposes of Direct Loans.</p> <p>Note: This exclusion will be made "if the Secretary is able to administer such policy in a manner that limits complexity and the burden on the student."</p>	<p>ED will exclude from a student's subsidized loan usage any payment period that the student does not complete due to a qualifying emergency.</p>

Section title and description	Additional information in May 15, 2020 electronic announcement
<p>3507. Exclusion from Federal Pell Grant duration limit</p> <p>"[A]ny semester (or the equivalent) that the student does not complete due to a qualifying emergency" will be excluded from a student's Federal Pell Grant duration limit.</p> <p>Note: This exclusion will be made "if the Secretary is able to administer such policy in a manner that limits complexity and the burden on the student."</p>	<p>ED will exclude from a student's Pell Grant lifetime eligibility used (LEU) any payment period that the student does not complete due to a qualifying emergency.</p>
<p>3508. Institutional refunds and federal student loan flexibility</p> <p>Institutions do not have to return Title IV funds to ED if those funds are associated with students who withdraw from the institution "during the [relevant] payment period or period of enrollment as a result of a qualifying emergency."</p> <p>Institutions must report:</p> <ul style="list-style-type: none"> • The number of affected Title IV recipients. • The amount of grant or loan assistance associated with each such recipient. • The total amount of grant or loan assistance for which the institution has not returned funds. <p>Students who withdraw from an institution "as a result of a qualifying emergency" do not have to return Federal Pell Grant or other grant funds based on such withdrawal. ED also will cancel Direct Loan repayment obligations associated with the payment period during which the student withdrew.</p> <p>Note: As reflected in HEA § 484B (20 U.S.C. § 1091b) – which is referenced in the CARES Act provision – FWS funds are not captured in Return of Title IV Funds (R2T4) requirements.</p> <p>With respect to student leaves of absence, institutions "may, as a result of a qualifying emergency, provide a student with an approved leave of absence that does not require the student to return at the same point in the academic program that the student began the leave of absence if the student</p>	<p>For any student who begins attendance in a payment period or period of enrollment that begins on or includes March 13, 2020, and subsequently withdraws from the period as a result of COVID-19-related circumstances, an institution is not required to return Title IV funds. This flexibility includes students who withdrew during the applicable period for whom the institution has already performed a R2T4 calculation and returned funds. The May 15 guidance explains the process to address both scenarios.</p> <p>If a student's grant overpayment has been waived in accordance with this CARES Act provision, an institution is not required to notify the student or the National Student Loan Data System (NSLDS) of the overpayment or refer any portion of the overpayment to ED. In addition, an institution must not apply any Title IV credit balance to pay down the grant overpayment. An institution must document in the student's file when it applies this CARES Act waiver. The May 15 guidance explains the process to address a situation where an institution has already returned the amount of a student overpayment.</p> <p>ED's R2T4 provisions do not affect institutional refund policies. If a student who qualifies for CARES Act R2T4 relief withdraws and is granted a tuition refund, the refund may create a Title IV credit balance that must be provided to the student within 14 days.</p> <p>Institutions may choose to amend tuition refund policies to all students in a given program if such changes are documented and</p>

Section title and description	Additional information in May 15, 2020 electronic announcement
<p>returns within the same semester (or the equivalent)."</p>	<p>disclosed to students. An institution may not amend its tuition policy on a student-by-student basis based on the amount of Title IV aid that the student receives as a credit balance as a result of the CARES Act R2T4 waiver.</p> <p>The CARES Act requires an institution to report to ED information specific to each student for whom it was not required to return Title IV funds under the waiver (and for each student for which Title IV funds were previously returned and are now being redrawn). The May 15 guidance describes in detail the reporting requirements. ED instructs institutions to retain specified information for each student who withdraws and qualifies for an R2T4 waiver. ED plans to develop a reporting process and will provide additional guidance in the future.</p> <p>An institution that moved students from ground-based instruction to distance learning, closed campus housing or other campus facilities, or experienced other interruptions in instruction may consider all withdrawals from students enrolled in ground-based instruction during the covered period to have been the result of circumstances related to the COVID-19 national emergency. For institutions that did not undergo changes in educational delivery or campus operations as a result of the COVID-19 emergency, the institution will be required to obtain a written attestation (including by email or text messages) from the student explaining why the withdrawal was the result of the COVID-19 emergency. Institutions must also obtain written attestations from students who withdrew from distance education programs explaining why the withdrawal was the result of the COVID-19 emergency.</p> <p>Allowable circumstances include, but are not limited to, illness of the student or family member, need to become a caregiver or first responder, loss of child care, economic hardship, inability to access Wi-Fi due to closed facilities, or an increase in work hours as a result of the COVID-19 emergency. Information (which in the judgment of the institution is reliable) provided by the family member of a withdrawn student whom the</p>

Section title and description	Additional information in May 15, 2020 electronic announcement
	institution is unable to contact is acceptable for documentation purposes.
<p>3509. Satisfactory academic progress</p> <p>For purposes of satisfactory academic progress (SAP) determinations, institutions may exclude attempted-but-not-completed credits from the quantitative component of the SAP calculation without requiring an appeal by students affected by the qualifying emergency.</p>	<p>To exclude attempted credits from SAP, an institution must have reasonably determined that the student's failure to complete those credits was the result of a COVID-19 related circumstance. Allowable circumstances include, but are not limited to, illness of the student or family member, need to become a caregiver or first responder, economic hardship, added work hours, loss of child care, inability to continue with classes via distance education, inability to access Wi-Fi due to closed facilities. If an institution temporarily ceases operations during a period of enrollment, attempted credits for all affected students (specific to that enrollment period) may be excluded.</p>

We are available to respond to questions.

Contacts



Stephanie J. Gold
 Partner, Washington, D.C.
 T +1 202 637 5496
stephanie.gold@hoganlovells.com



Megan Wilson
 Associate, Washington, D.C.
 T +1 202 637 7565
megan.wilson@hoganlovells.com

www.hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses. The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members. For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com. Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney advertising. Images of people may feature current or former lawyers and employees at Hogan Lovells or models not connected with the firm.
 © Hogan Lovells 2020. All rights reserved.