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The CARES Act: Summary of provisions impacting higher education institutions and borrowers

On March 25, 2020, the Senate approved a $2 trillion relief and stimulus package designed to address the economic impact caused by the COVID-19 pandemic. Two days later, the House of Representatives passed the legislation, and President Trump signed it into law. The Coronavirus Aid, Relief, and Economic Security ("CARES") Act, also known as COVID III, is the third such supplemental appropriations law passed by Congress, with additional packages anticipated in the coming months.

Below, we provide a brief overview of the provisions of the Act that most directly concern institutions of higher education and their borrowers. In some cases, the statutory language contemplates extraordinary waivers, assistance, and accommodations, with very little detail regarding when and how such relief will become available.

Provisions impacting institutions of higher education

As a threshold matter, we emphasize that the Act makes no distinction between private, non-profit institutions and private, proprietary institutions in the provisions discuss below.

Regulatory Relief (Section 3501 et seq.)

- *Title IV Withdrawals*: An institution's obligations to return Title IV funds, other than assistance received as part of Federal Work Study programs, is waived if a student withdraws during a payment period or period of enrollment due to COVID-19. Institutions using the waiver must report the number of withdrawn Title IV recipients, the amount of grant or loan assistance (other than assistance received as a part of a Federal Work Study Program), and the total amount of grant or loan assistance not returned to the U.S. Department of Education (the "Department").
  - A student's obligation to return Title IV aid is waived if the student withdraws due to COVID-19.
  - A student's obligation to repay loans is cancelled if the student withdraws due to COVID-19.
  - Institutions may, as a result of COVID-19, 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 returns within the same semester.
- *Time Limits*: Any semester that a student does not complete due to COVID-19 does not count toward the time limits prescribed for federal subsidized loans and federal Pell Grants.
- *Satisfactory Academic Progress*: Institutions may exclude any attempted credits not completed as a result of COVID-19 from the quantitative component of the satisfactory academic progress calculation without requiring an appeal by the student.
- *Campus Aid Waivers*: For award years 2019-2020 and 2020-2021, the institutional matching requirement for the Federal Work Study ("FWS") and Federal Supplemental Educational Opportunity Grant ("FSEOG") programs is waived.

- *Federal Supplemental Educational Opportunity Grant Funds*: Institutions can transfer any unexpended FWS allotment to the institution's FSEOG allotment. FSEOG allocations can be used to award emergency financial aid to undergraduate or graduate students.

- *Federal Work Study during a Qualifying Emergency*: If a student cannot fulfill his or her federal work study obligations because of COVID-19, institutions can continue to make FWS payments for up to one academic year. The institution must meet its matching share, unless the matching requirement is waived by the Department.

- *Historically Black Colleges and Universities:* For the duration of any emergency due to COVID-19, the Department may grant a deferment to an institution that has received a loan for capital financing. During the deferment period, the Department shall make principal and interest payments, and at the closing of such a loan the institution shall be required to repay the Department for payment on principal and interest made by the Department.

- *Reporting Requirements for Historically Black Colleges and Universities and Minority Serving Institutions*: The Department may waive certain reporting requirements for Historically Black Colleges and Universities and Minority Serving Institutions.

- *Grant Modification*: The Department may waive or modify allowable uses of funds and matching requirements for grants awarded under the Federal TRIO and GEAR-UP programs as a result of the COVID-19 pandemic.

- *Distance Learning at Foreign Institutions*: The Department may permit a foreign institution facing an emergency or major disaster to use distance learning for the duration of the emergency or disaster and the following payment period.

Statutory and Regulatory Waivers

We highlight here that the CARES Act does **not** give the Department broad authority to grant statutory or regulatory waivers to institutions of higher education. Early drafts of the legislation included language granting the Department the authority to "waive any statutory or regulatory requirement (such as those requirements related to assessments, accountability, allocation of funds, and reporting)… if the Department determines that such a waiver is necessary and appropriate." However, this language did not make it into the final bill. This means, absent further legislation, statutory and regulatory deadlines remain unchanged.

Education Stabilization Fund (Section 18001 et. seq.)

Of the $2 trillion available, the CARES Act creates a $30.75 billion Education Stabilization Fund. About $14 billion of the Education Stabilization Fund is allocated to the Higher Education Emergency Relief Fund. The Higher Education Emergency Relief Fund, in turn, is apportioned as follows:

- About $12.5 billion (90%) directly to institutions to prevent, prepare for, and respond to COVID-19.
  - In allocating these funds, 75% of what each institution receives would be based on its relative share of full time equivalent students who are federal Pell Grant recipients, and 25% of its relative share of full-time equivalent student who are not federal Pell Grant recipients. Students enrolled exclusively in distance education courses are excluded from this calculation.
- About $1 billion (7.5%) for minority-serving institutions.
- About $350 million (2.5%) for grants to institutions particularly impacted by coronavirus.

Institutions may use the funds received "to cover any costs associated with significant changes to the delivery of instruction due to the coronavirus, so long as such costs do not include payment to contractors for the provision of pre-enrollment recruitment activities; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction, or religious worship." At least 50% of the funds awarded must be used for emergency financial aid grants to students. Institutions receiving funds must submit a report to the Department that describes the use of the funds.

Paycheck Protection Program (Section 1102)

Included in the CARES Act is $349 billion for Small Business Administration forgivable loans. Businesses or non-profits with less than 500 employees, or the applicable size standard for the industry, can apply for a loan through June 30, 2020. The maximum loan amount is $10 million and it may be used for payroll costs, costs related to the continuation of group health care benefits, salaries, payments of mortgage interest, rent, utilities, and debt obligations that were incurred before February 15, 2020. Part or all of the loan may be forgiven if the business or non-profit maintains its payroll. The law also includes other Small Business Administration loans and program changes that may ultimately be of interest to the higher education community.

Provisions impacting borrowers

Temporary Relief for Federal Student Loan Borrowers (Section 3513)

Payments on federal student loans that are held by the Department are suspended through September 30, 2020.

- Interest is waived for the duration of the suspension.
- The suspended payments count as if the borrower had made a payment for the purpose or any loan forgiveness or loan rehabilitation program.
- For the purpose of reporting information about a loan to a consumer reporting agency, any payment that has been suspended is treated as if it were a regularly scheduled payment made by the borrower.

During the duration of the suspension, the Department shall suspend all involuntary collection on loans. We emphasize that the Department can only suspend collection on loans owned by the U.S. Department of Education, which include Direct Loans and loans made under the Federal Family Education Loans Program (FFELP) that were transferred to the Department. Perkins Loans, FFELP loans held by a bank or other financial institution, and private education loans are not covered by the suspension.

Employer Payment of Student Loans (Section 2206)

The CARES Act temporarily modifies 26 U.S.C. § 127 to permit employers, as part of an educational assistance program, to make payments toward an employee's student loan obligation on a tax-free basis through the end of 2020. The maximum amount an employee can receive tax free for all educational expenses, including student loan payments, is $5,250. Such employer payments would not be treated as income for the employee.

Service Obligations for Teachers (Section 3519)

Under the TEACH Grant program, the Department may modify the categories of extenuating circumstances under which a grant recipient is unable to fulfill his or her service obligation, and shall consider part-time service interrupted by COVID-19 to be full-time service. The Department will also waive the requirement that teaching service be consecutive if the student resumes teaching after an interruption due to COVID-19.

Thompson Coburn will be monitoring the implementation of these provisions closely, and expects to provide updates as additional information becomes available. Postsecondary institutions with questions regarding the impact of the CARES Act on higher education are welcome to contact the authors of this blog post.

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If there are topics you would like us to cover, or questions you may have regarding a topic that already has been addressed, please do not hesitate to reach out. Finally, if you would like to contribute a guest article, we would love to hear from you.

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