

UPDATE ON CARES ACT EMERGENCY FINANCIAL AID GRANTS TO HIGHER EDUCATION STUDENTS

Hodgson Russ College & University Alert
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COVID-19 higher education grants under the CARES Act

Various provisions of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act permit higher education institutions to use certain funds allocated by the Department of Education to support students with expenses and financial needs related to the Coronavirus (COVID-19) pandemic. This includes a Higher Education Emergency Relief Fund (“HEERF”) that provides more than \$14 billion in emergency funding to higher education. Of those funds, more than \$6 billion must go directly to students in the form of emergency financial aid grants for expenses related to the disruption of campus operations due to the COVID-19 crisis.

Importantly, Section 3504 of the CARES Act allows higher education institutions to use supplemental grants they receive through the Higher Education Act (20 U.S.C. 1070b et seq.) to make grants to “assist undergraduate or graduate students for unexpected expenses and unmet financial need” as the result of COVID-19 pandemic (a “COVID-19 higher education grant”).

In addition, under Section 18008 of the CARES Act, the Secretary of Education was directed to allocate additional funds to Howard University and Gallaudet University to directly support students facing urgent needs related to the COVID-19 pandemic (also, “COVID-19 higher education grants”), and to support these institutions in particular as they cope with the immediate effects of the COVID-19 pandemic, including school closures.

Finally, Section 18004 of the CARES Act directs the Secretary of Education to allocate funds out of the HEERF to higher education institutions to directly support students facing urgent needs related to the COVID-19 pandemic, and to support institutions as they cope with the immediate effects of the COVID-19 pandemic, including school closures. These funds under Section 18004 may be used (1) to defray the institutions’ expenses, including lost revenues and payroll for employees and (2) for “emergency financial aid grants to students for expenses related to the disruption of campus operations due to the [COVID-19 pandemic] (including eligible expenses under a student’s cost of attendance, such as food, housing, course materials, technology, health care, and child care)” (grant funds provided under this

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item (2) hereinafter referred to as “HEERF Student Emergency Financial Aid Grants,” which are also included herein as a type of COVID-19 higher education grant). However, recipient institutions of higher education must use no less than 50% of such funds received under Section 18004 to provide HEERF Student Emergency Financial Aid Grants to students, as described in item (2) above.

The U.S. Department of Education has issued helpful FAQs answering questions that higher education institutions may have about HEERF grants (here and here). In part, these FAQs confirm that institutions cannot refund themselves for expenses incurred as a result of the COVID-19 pandemic with the portion of the HEERF funds designated for HEERF Student Emergency Financial Aid Grants. These ineligible expenses include but are not limited to refunds for (a) the cost of electronic hardware provided to students to facilitate remote learning (such as laptops), (b) wages paid to student workers, and (c) amounts refunded to students for room and board, tuition, or other fees. The FAQs also confirm that while the CARES Act requires each institution that accepts funds from the HEERF, including funds used to pay HEERF Student Emergency Financial Aid Grants, to continue to pay employees and contractors to the greatest extent practicable, institutions *may not* use HEERF Student Emergency Financial Aid Grant funds to pay employees and contractors. However, portions of HEERF grants not designated for HEERF Student Emergency Financial Aid Grants may be used for some of these purposes.

Tax Treatment of COVID-19 higher education grants

Given the relief provided by COVID-19 higher education grants, there were some questions as to whether a student who receives a COVID-19 higher education grant is required to include such amounts received in their gross income (i.e., whether these COVID-19 higher education grants are taxable to the recipient students).

Generally, Internal Revenue Code (Code) section 139 provides that gross income does not include any amount received by an individual as a “qualified disaster relief payment.” The term qualified disaster relief payment refers to a variety of payments made to, or for the benefit of, an individual, including those to pay or reimburse reasonable and necessary personal, family, living, or funeral expenses incurred as a result of a “qualified disaster.” Note that such payments are only qualified payments to the extent any expense compensated by the payment is not otherwise compensated for by insurance or some other reimbursement. Further, the Code defines a qualified disaster as including any “Federally declared disaster,” which generally means any disaster subsequently determined by the President of the United States to warrant assistance by the Federal Government.

In various guidance, including INFO 2020-0008 (here) and FAQs posted to their website (here), the IRS has confirmed that the COVID-19 pandemic is a Federally declared disaster for the purposes of Code section 139. As such, IRS FAQs provide that “[e]mergency 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” and thus are not includable in the recipient’s gross income.

Importantly, however, the IRS FAQs also provide that because COVID-19 higher education grants are excluded from gross income, the recipient students cannot claim any deduction or credit for expenses paid with the grant. This includes expenses for tuition and fees, the American Opportunity Tax Credit, and Lifetime Learning Credit.

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Please contact Marla Waiss (716.848.1203) or Patricia Sandison (518.433.2427) with any questions you may have regarding how this relief may impact you or your organization.

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

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