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LEGAL UPDATES

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CARES on Campus: Stimulus Program & Higher Education

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The U.S.'s Three-Phase Stimulus Program

For several weeks, Congress has been working to develop a "stimulus package" in response to the COVID-19 pandemic. The stimulus program is not just one piece of legislation; thus far, it's three.

Collectively, these three laws—including the law enacted by Congress today—will provide unprecedented financial support to the nation to address both the immediate and potentially long-term healthcare and economic impact of COVID-19. The program contains significant funding for higher education institutions, along with meaningful benefits for student borrowers. Here, Husch Blackwell's Education Team breaks down how that support will arrive on campus.

The stimulus program generally governs the period of pandemic emergency. While the three laws include numerous waivers of existing requirements for existing public benefits and social programs, several provisions will sunset at specified times and/or upon the cessation of the emergency period. In addition to providing direct funding to prevent and combat COVID-19 and support impacted individuals, families, and business sectors—including higher education—the program also provides necessary administrative funding to federal agencies to manage and monitor these programs.

PHASE 1: "Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020"

Covers: Treatment, Vaccines, SBA Loans, Medicare Treatment Access

On March 6, 2020, Congress enacted PL 116-123 [H.R. 6074], which provides: (1) emergency funding to federal agencies; (2) grants and cooperative agreements to support COVID-19 prevention and development of new and affordable treatments and vaccines; and (3) waivers of certain telehealth requirements for phone and video consultations between medical providers and Medicare recipients.

In addition, this law provides significant relief to small businesses to qualify for "Economic Injury Disaster Loans" through the Small Business Administration ("SBA"). Notably, private, non-profit institutions of higher education of any size may qualify for loans of up to $2 million to meet financial obligations and operating expenses which could have been met absent COVID-19. The loans may be used to pay fixed debts, payroll, accounts billable, and other bills. So long as the institutions' state has opted to participate in the program, the SBA encourages small business to apply. Loans under this program will be awarded until the appropriation has been depleted or the application deadline of December 21, 2020, whichever comes first. For more information from Husch Blackwell on this loan program, click here.

PHASE 2: "Families First Coronavirus Response Act"

Covers: Virus Testing, Benefits and Social Programs, Paid Sick and Family Leave

On March 18, 2020, Congress enacted PL 116-127 [H.R. 6201], an emergency supplemental appropriation. The law:

Guarantees free COVID-19 testing through restrictions on insurers and a mechanism for uninsured individuals to obtain testing at no cost.

Expands several public benefits and social programs, including: unemployment benefits and food assistance for children, the elderly, and individuals with disabilities under the National School Lunch Program, SNAP, and other food and nutrition programs.

To protect workers facing COVID-19-related absences, establishes expanded Family Medical Leave and provides emergency paid sick leave for employees of public institutions and private employers with fewer than 500 employees. For more detail from Husch Blackwell around these provisions, click here and here.

To assist certain employers in paying for expanded leave, creates payroll tax credits for employers based on qualifying sick leave wages and family leave wages, as well as tax credits for certain self-employed individuals for qualifying sick and family leave.

Also, to ensure swift access to expanded benefits, the law establishes opportunities for regulated entities to seek temporary waivers of certain requirements of the public benefit programs addressed in the law.

PHASE 3: "The Coronavirus Aid, Relief, and Economic Security ('CARES') Act"

Covers: Bailouts for Taxpayers, Students, States, Private Industries, and the Education Sector

Today, March 27, Congress enacted [H.R. 748], known as the CARES Act, which provides direct support to taxpayers, student borrowers, states, certain private industries, and educational institutions. At $2.3 trillion, this is the largest stimulus bill in U.S. history, exceeding the 2009 American Recovery and Reinvestment Act, PL 111-5, which infused the nation with $787 billion in response to the 2008 economic collapse. Today's legislation passed the Senate unanimously last night, and this morning passed the House, before it was signed into law.

This third phase of the stimulus program, also referred to by Senate Majority Leader McConnell as an "emergency relief bill," provides numerous benefits to the higher education sector under a section of the law called "The COVID-19 Pandemic Education Relief Act of 2020." Notably, this includes institutions of higher education ("IHEs") defined under sections 101 and 102 of the Higher Education Act, 20 U.S.C. §§ 1001-02, including two and four-year public colleges and universities, non-profit colleges and universities, for-profit colleges and universities, and postsecondary vocational schools.

We summarize each component of the law related to IHEs below. For Husch Blackwell information about the CARES Act beyond the higher education sector, click here.

Relief for IHEs Through State Grants

One of the most significant components of the new stimulus installment is the Education Stabilization Fund, which provides $30.75 billion to support the education sector. This fund has two main components: the Governor's Emergency Education Relief Fund and the Higher Education Emergency Relief Fund.

Governor's Emergency Education Relief Fund (~$3 billion). This program will provide funding to governors to support their states' school districts and IHEs. By April 27, governors will be invited to apply for funding. Applications will be approved or denied within 30 days. Approved applications will be funded based on the state's portion of population aged 5-24 and population of children counted under the Elementary Secondary Education Act. Funds through this program are available for IHEs and can be used for the following purposes:

- ***Broad Emergency Support to Schools***. To provide emergency support to IHE's, through grants from the state, in serving students within the state that have been most impacted by COVID-19, and to support educational services and ongoing functionality of the institution.
- **Emergency Educational Services**. As deemed by the governor as essential, funds may be used by IHEs to carry out emergency educational services for students; provide child care, early childhood education, and social and emotional support; and protect education-related jobs.

Higher Education Emergency Relief Fund (~$14.25 billion). Nearly 90% of this program will be available to IHEs to prevent, prepare for, and respond to COVID-19. Of this portion, 75% of funds are afforded to IHEs based on each institution's relative share of full-time Pell Grant recipients who were not exclusively enrolled in distance education prior to the emergency; 25% will be allocated based on the same basis for full time non-Pell Grant recipients.

The remaining 10% of funds will support IHEs though existing HEA programs, as follows:

7.5% to support existing HEA programs through additional awards: Strengthening Student Improvement Program; Strengthening HBCUs Program; Developing Hispanic-Serving Institutions Program; Promoting Postbaccalaureate Opportunities for Hispanic Americans Program; Masters Degree Programs at Historically Black Colleges and Universities and Predominantly Black Institutions.

2.5% to address the greatest unmet needs related to COVID-19 through the Fund for the Improvement of Postsecondary Education Program.

Waiver of IHE Payment Requirements

Campus-Based Aid Waiver of Non-Federal Share. For nonprofit institutions, the non-federal (aka "matching") contribution to campus-based aid programs will be waived for the 2019-20 and 2020-21 award years. (Campus-based aid programs are the Federal Work Study ("FWS") and Federal Supplemental Educational Opportunity Grant ("FSEOG") programs.)

R2T4 Waivers. During the period of emergency, IHEs will not be required to return Title IV aid disbursed to students who withdraw due to the COVID-19 outbreak. IHEs are, however, required to report information relating to the student and amount that would otherwise have been returned.

HBCUs. The law permits the U.S. Department of Education to defer the principal and interest payments on loans, which are generally provided to assist in capital financing, to historically black colleges and universities.

IHE Compliance Flexibility

SAP. Institutions may waive from students' satisfactory academic progress calculations attempted credits that are not completed by students due to the COVID-19 outbreak.

Grant and Matching Modifications. IHEs may seek waivers of any grant requirements or matching requirements under certain discretionary grant programs including: the Strengthening Student Improvement Program; the Strengthening HBCUs Program; TRIO and GEAR UP programs; grants for Developing Institutions including Hispanic-serving institutions; and Masters Degree Programs at Historically Black Colleges and Universities and Predominantly Black Institutions.

Financial Aid Relief for Students and Borrowers

Emergency Aid. Institutions may use FSEOG funds to award emergency grants to undergraduate and graduate students for unexpected expenses or unmet need resulting from the COVID-19 outbreak. For 2019-20, grants may be up to $6,195. This emergency aid will not count as "estimated financial assistance" that would otherwise reduce future need-based aid. Institutions may contract with scholarship-granting organizations to administer these grants under certain conditions. To help fund this initiative, institutions may transfer up to 100% of their remaining FWS funds to FSEOG during a period of qualifying emergency.

Tax Relief. To encourage employers to implement student loan repayment programs, the legislation includes a tax relief through 2020 allowing employers to exclude from their income up to $5,250 per employee for employer-paid student loan repayment assistance and tuition/textbook assistance.

Loan Repayment Relief. The law hits the "pause" button on all federal student loan and interest payments until September 30. That means those payments can be deferred without penalty up to that date.

Federal Work Study Wages. The law allows IHEs to continue paying FWS students who are unable to fulfill their work study obligations due to the COVID-19 outbreak. This allowance is available up to one academic year.

Lifetime Eligibility Waiver. Students who withdraw from their IHE due to the COVID-19 outbreak will not have that "semester (or the equivalent)" deducted from their lifetime eligibility for federal subsidized loans and Pell grants.

Teach Grant Requirements Waiver. Borrowers who received a TEACH grant and who are teaching in high-need areas may be excused from the terms of the grant and still qualify for loan forgiveness if they are unable to fulfill the terms of service due to the COVID-19 outbreak.

Contact us

As guidance develops, Husch Blackwell will provide updates and additional information as to how IHEs can best proceed to secure needed support for their student and institutions. Should you need immediate assistance, please contact Julie Miceli, Anne Cartwright or your Husch Blackwell attorney.

COVID-19 resource

Husch Blackwell has launched a COVID-19 response team providing insight to businesses as they address challenges related to the coronavirus outbreak. The page contains programming and content to assist clients and other interested parties across multiple areas of operations, including labor and unemployment, retailing, and supply chain m*anagement, among others*.