

LEGAL UPDATES

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## 2020 CARES Carryover: U.S. Department of Education OIG Commences CARES Act Audits

The U.S. Department of Education (ED) Office of Inspector General (OIG) first issued guidance about upcoming audits of Coronavirus Aid, Relief, and Economic Security (CARES) Act Higher Education Emergency Relief Fund (HEERF) spending and administration in May, and recently launched CARES Act audits with select schools across the country.

The OIG's HEERF audits are expected to address how institutions of higher education have spent their relief funds, compliance with key provisions of the CARES Act and ED guidance, as well as any alleged fraud, misuse, or abuse relating to HEERF funds. The OIG's CARES Act reviews can be narrowly focused on one specific compliance issue or cover a wide range of requirements. In our experience, OIG audits are frequently more in-depth than an annual audit and even other compliance reviews. Based on the OIG's audit plan and what we are seeing from early activity by the OIG in this area, we expect the OIG's audit reviews to focus on the following:

**Institutional use of relief funds.** The OIG will consider the use of relief funds that may have supported other federal programs, such as Federal Work Study and Federal Supplemental Educational Opportunity Grants, as well as colleges' and universities' use of the institutional portion of HEERF funds. Institutions should be prepared to demonstrate how each expenditure complies with ED guidance, but is also directly tied to campus disruption due to COVID-19, as required by the CARES Act.

**Student portion.** The OIG will surely focus significant effort in evaluating institutions' approaches and decisions around allocating their student portion of the HEERF. Institutions should be prepared to explain how individual student allocation amounts were determined based on campus disruptions and

anticipated student need relating to allowable expenses (e.g., housing, childcare, food, and other needs). Institutions should be able to show: how they determined and verified student eligibility; that they properly excluded fully-online students; informed student recipients about the allowable uses for their direct allocation; and conducted outreach to students to ensure that they were aware of the funding opportunity. In light of ED's (contested) Interim Final Rule requiring that CARES Act student emergency grants be made only to students eligible for Title IV Federal Student Aid, institutions should consider how they will respond to inquiries on this issue.

**Fund draw-downs and expenditures.** As with any audit, the OIG will evaluate whether HEERF funds were drawn-down and then expended within the allowable timeframe. An institution should be ready to show its document trail of draw-downs and timely expenditures, as well as its policies and practices to follow-up on funds that may have been distributed to students but which were not timely received or cashed.

**Fund Effectiveness.** According to the OIG's audit plan, OIG will also look into the "effectiveness" of institutions' use of the HEERF funds. Because there are no specific legal obligations or definition in the law or guidance as to what is and is not "effective," we anticipate that the OIG could be looking at this issue in effort to report to Congress, in the aggregate, as to whether the HEERF funding achieved Congress's overall goals. That said, it would be prudent for institutions to collect, if available, data, academic observations or trends, and anecdotes that may show the effectiveness of their HEERF programs, and that the distributions achieved the institutions' and CARES Act's goals.

### **What this means to you**

Although we do not yet know how many OIG audits will be conducted in 2021, institutions of higher education should be ready for an initial audit notification letter:

Audit entrance conferences with the OIG are often scheduled quickly and within 7-10 days of an initial audit notice; identify key members of your audit-response team now and make sure that team is ready to go in the event of an audit notice.

Ensure HEERF documentation, including student applications and verifications, is regularly updated and clearly labeled in an electronic format for timely delivery.

Work with legal counsel in advance of an audit to memorialize HEERF funding decisions and allocation practices.

Ensure timely follow-up on critical issues such as uncashed student-share allocations, invalid verifications, or information suggesting student ineligibility.

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Develop ongoing systems for administering and documenting for HEERF spending, including the new tranche of HEERF funds slated for distribution to institutions of higher education under the Consolidated Appropriations Act of 2021.

### **Contact us**

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

### **CARES Act, COVID-19 & Return-to-Work Guidance**

Husch Blackwell provides guidance regarding COVID-19 updates, the CARES Act, and rapidly changing state-by-state orders, including those that impact stay-at-home and return-to-work protocols. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.