

Education

Colleges and Universities: What to Know When You Accept and Distribute CARES Act Emergency COVID-19 Funds



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Colleges and universities adapting to COVID-19 will soon receive billions of dollars authorized by Congress through the CARES Act. Attendant with that funding will come legal obligations that colleges and universities must carefully understand and obey. Below, we discuss those obligations as well as best practices for colleges and universities to avoid missteps—to ensure that the aid serves its purpose of facilitating schools’ educational mission without raising unforeseen problems.

The Act’s largest education program is the Education Stabilization Fund, totaling over \$31 billion and providing \$14 billion to postsecondary educational institutions. Recently, Secretary DeVos announced that colleges and universities across the country will receive more than \$6 billion to provide direct emergency cash grants to students impacted by COVID-19.^[1] The total amount of money that each institution will receive will largely be determined by the number of enrolled students who currently receive Pell Grants, as well as the school’s total enrollment.^[2]

The Act specifies that college and universities must use this money to “provide cash grants to students for expenses related to disruptions to their educations due to the COVID-19 outbreak, including things like course materials and technology as well as food, housing, health care, and childcare.”^[3] Under the legislation, institutions have broad discretion when providing the grants to students, which mirrors the wide variety of programs schools use every year to provide students federal and state financial aid.

To receive these cash grants, academic institutions will be required to certify that they will provide the funds to students pursuant to applicable federal law. The CARES Act has some specific conditions as well, including a requirement that institutions who receive money pay their employees and contractors to the “greatest extent practicable” during the health crisis. These certifications, and the nature of receiving federal funds generally, present several oversight and compliance issues that educational institutions should be aware of prior to distributing grants to students. These concerns are further heightened given the Trump administration’s sparse guidance regarding the grants’ distribution and administrative oversight.

Thus, it is imperative that colleges and universities scrutinize their compliance programs, understand the risks associated with receiving new federal funds during this crisis, and adapt their processes accordingly. There are several things colleges and universities should do now to strengthen their compliance programs and reduce risk as they receive and distribute funds to students, which can make potential future oversight less burdensome.

- **First**, colleges and universities should identify the various offices and personnel normally associated with receiving funds and providing grants to students. These offices, such as those that already distribute financial aid like Pell Grants, should have an existing compliance program with trained personnel who can easily work with government entities and students during this crisis. Starting here will help educational institutions use resources efficiently, understand the

potential compliance issues, and identify personnel who can provide useful internal guidance. Understanding the obligations related to receiving and distributing the grants at the outset will allow academic institutions, and their general counsel, to efficiently oversee the process and ensure global compliance with federal law.

- **Second**, keeping complete and transparent records throughout the process will make compliance easier and the grant process more efficient. For example, colleges and universities should determine the amount of federal funds for which they are eligible, note how much they receive through the CARES Act, and retain transactional paperwork associated with the disbursement of funds to students. A clear set of records, documenting both ends of the process, will help to fulfill any future compliance or oversight obligations. As in all times of crisis, there will be a desire to move as quickly as possible in order to provide students with meaningful relief. But it will be imperative that educational institutions find the correct balance between speed and care.
- **Third**, the “Varsity Blues” investigation uncovered potential weaknesses in university compliance programs, and if universities don’t take preparatory steps now to ensure that their compliance programs and policies are up to standard, this crisis could reveal further programmatic weaknesses. For example, the CARES Act includes a specific conflict of interest provision, prohibiting emergency funds from going to entities with a substantial relationship to government officials and their immediate relatives. This requirement could present new conflict of interest issues, separate from those raised with previous federal educational grants. All institutions should review, and some may have to adapt, their conflict of interest policies given their current relationship to government entities.
- **Fourth**, colleges and universities should take care in their communications with government entities at all times, but even more so given the unique liability concerns associated with receiving CARES Act funds. To receive these funds, educational institutions must sign certifications and agree to follow and abide by certain federal reporting regulations, which could be new to some private institutions. Similar to the agreements associated with research and other federal funds, these certifications will likely carry potential liability under the False Claims Act and other federal statutes associated with providing government entities with accurate statements.^[4]
- **Fifth**, colleges and universities should understand that Congressional scrutiny will increase in the coming months given the new oversight bodies that the CARES Act created. While there are permanent House and Senate education committees that provide general oversight of education issues, there are also new watchdog entities comprising inspectors general, and select congressional committees, dedicated to overseeing the distribution and use of CARES Act funds. Creating a complete record and taking care in communicating with the government now will be helpful down the road should any of these oversight bodies come calling later.

Colleges and universities will undoubtedly provide needed relief to their students and employees through these cash grants. But providing this relief will also invite new government oversight, potentially from groups with whom the institution does not normally interact.

College and universities, and their general counsel, should review their compliance programs and processes to adequately meet this new moment. Jenner & Block continues to analyze the government’s response to the current pandemic and counsel our clients on responding to government oversight and efficiently complying with federal regulations and requirements.

Jenner & Block’s CARES Act analysis can be found [here](#) and the firm’s COVID-19 Resource Page is [here](#).

Other Potentially Helpful Client Alerts/Bulletins:

- [Financial Relief in Response to COVID-19, So Far... Episode I](#)
- [Guidance for Employers Addressing the Workplace Impact of COVID-19](#)
- [Evaluating Force Majeure Clauses in Connection with the COVID-19 Outbreak](#)
- [Litigation Strategies For Colleges and Universities Sued Over COVID-19 Campus Closures](#)
- [COVID-19 Workplace Impact – DOL Issues Additional Guidance on Employee Leave Rights Under the FFCRA](#)
- [COVID-19 Workplace Guidance – DOL Issues Guidance Regarding Expanded Family and Medical Leave and Sick Leave Under Families First Response Act](#)
- [COVID-19: Employer Guidance for Addressing Possible Layoffs and Closures](#)
- [US OSHA Issues Guidance for Employers Regarding Preparing for COVID-19 Risks](#)
- [New Congress, New Outlook: 10 Things In-House Counsel Need To Know About House Congressional Committees](#)

Conscious of the human, operational and financial strain that coronavirus is placing on businesses and organizations worldwide, Jenner & Block has assembled a multi-disciplinary Task Force to support clients as they navigate the legal and strategic challenges of the COVID-19 / Coronavirus situation.

For additional information and materials, please visit our COVID-19 / Coronavirus Resource Center.

[Click here to visit our COVID-19 / Coronavirus Resource Center](#)

[1] U.S. Dept. of Edu., *Secretary DeVos Rapidly Delivers More Than \$6 Billion in Emergency Cash Grants for College Students Impacted by Coronavirus Outbreak* (Apr. 9, 2020), <https://www.ed.gov/news/press-releases/secretary-devos-rapidly-delivers-more-6-billion-emergency-cash-grants-college-students-impacted-coronavirus-outbreak>

[2] U.S. Dept. of Edu., *Secretary DeVos Rapidly Delivers More Than \$6 Billion in Emergency Cash Grants for College Students Impacted by Coronavirus Outbreak* (Apr. 9, 2020), <https://www.ed.gov/news/press-releases/secretary-devos-rapidly-delivers-more-6-billion-emergency-cash-grants-college-students-impacted-coronavirus-outbreak>

[3] U.S. Dept. of Edu., *Secretary DeVos Rapidly Delivers More Than \$6 Billion in Emergency Cash Grants for College Students Impacted by Coronavirus Outbreak* (Apr. 9, 2020), <https://www.ed.gov/news/press-releases/secretary-devos-rapidly-delivers-more-6-billion-emergency-cash-grants-college-students-impacted-coronavirus-outbreak>

[4] See, e.g., 18 U.S. Code § 1001 (2018).



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