

Education

What Colleges and Universities Can Expect from the American Rescue Plan



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President Biden signed the American Rescue Plan—his first major legislative proposal since taking office—on Thursday, just one day after the final version of the bill cleared Congress.

The American Rescue Plan (ARP) Act of 2021 marks the nation’s third COVID-19 stimulus relief package. At \$1.9 trillion, the package is more than twice the size of the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) passed in December 2020, but slightly smaller than the initial \$2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act passed in March 2020.

While not the largest COVID-19 relief package to date, with roughly \$39.6 billion in aid to colleges and universities,^[1] the American Rescue Plan directs more money toward institutions of higher education than either of the two previous stimulus packages. This is less than the \$97 billion sought by the American Council on Education which nonetheless praised the legislation.^[2] The bill commits significant money in direct aid to institutions while also making notable policy changes related to the GI Bill and student loans.

Direct Aid to Institutions

Of the nearly \$40 billion in funds committed to higher education, the new package allocates 91% to public and private nonprofit institutions in the form of direct grants.^[3] Just 1% of the aid will go to for-profit institutions in the form of direct grants.^[4] Under the CRRSAA, this distribution was 89% and 3% respectively.^[5] It also directs 7.5% of the funds to programs for minority serving institutions, a category that includes HBCUs and tribal colleges, and reserves the remaining 0.5% for the Fund for the Improvement of Postsecondary Education.^[6]

The ARP allocates direct grants, comprising 92% of the appropriated relief funds for higher education, utilizing the same formula used under the CRRSAA.^[7] This formula prioritizes institutions with higher percentages of Pell Grant recipients who were not enrolled in distance learning before the pandemic relative to all other eligible institutions.^[8]

Like the first two relief bills, the ARP requires institutions that receive direct grants to spend at least 50% of their allocation on emergency financial aid grants for students.^[9] It also directs institutions to spend at least some portion of the received funds on “implement[ing] evidence-based practices to monitor and suppress coronavirus in accordance with public health guidelines” and conducting outreach to inform students that they may be eligible “to receive a financial aid adjustment due to the recent unemployment of a family member or independent student or other circumstances described in section 479A of the Higher Education Act of 1965.”^[10] Like the previous bills, the ARP authorizes the Secretary of Education to determine whether institutions may award emergency financial aid grants to international and undocumented students.^[11]

Institutions receiving direct aid through the ARP should carefully monitor and document their compliance with these requirements to avoid being subject to a False Claims Act (FCA) action. The Department of Education has previously referred to the FCA, the government's most powerful tool for attacking fraud in government contracting, in the Certification and Agreement forms it requires recipients of COVID-19 relief aid to sign.

Closing the 90/10 Loophole

In a victory for veterans' groups and some consumer advocates, but opposed by Career Education Colleges and Universities (the national trade association for trade and vocational schools), the ARP will close what is known as the 90/10 loophole beginning in 2023.^[12] Section 2013 of the ARP modifies a provision of the Higher Education Act (HEA) of 1965 (20 U.S.C. § 1094), the "90/10 rule," that requires for-profit colleges to obtain at least 10% of their revenue from sources other than Title IV funds (federal student loans).^[13] This 90/10 rule was intended as a market viability test to protect would-be students under the theory that quality institutions could attract students who were able to pay with funds other than student loans. Funds from the GI Bill, however, are not Title IV funds and were thus treated as private sources of funding for purposes of complying with the 90/10 rule. The ARP eliminates this loophole by broadening the HEA's language so that 10% of funds must come from completely non-federal funds rather than just non-Title IV funds.^[14]

Implications for Student Loan Forgiveness

The Student Loan Tax Relief Act, incorporated as an amendment to the American Rescue Plan, makes any student loan forgiveness from 2021 through 2025 tax free.^[15] Previously, discharged student loan debt could, in many cases, be treated as taxable income, creating surprise tax bills for borrowers who had their loans forgiven.^[16] Advocates are hoping that this provision will clear the way for future student loan forgiveness by Congress or Executive Order. Even without broad-based student loan forgiveness, this provision will benefit the many borrowers who are enrolled in income-driven repayment plans. Previously, only discharge due to qualifying disability or through the Public Service Loan Forgiveness Program was nontaxable.^[17]

On his first day in office, Biden directed the then-Acting Secretary of Education to extend the moratorium on student loan payments and interest accrual through September 2021.^[18] The American Rescue Plan does not extend this freeze or forgive any debt.

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.

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[1] H.R. 1319, 117th Cong. § 2003 (2021).

[2] Jillian Berman, “*This is a Significant Amount of Money*”: COVID-19 Relief Bill Would Send Nearly \$170 Billion to Schools, Market Watch (March 9, 2021).

[3] Rebecca R. Skinner, et al., Cong. Rsch. Serv., Revised Estimated FY2021 Grants to States and Institutions of Higher Education Under the Education Stabilization Fund Based on the Senate-Passed Substitute to H.R. 1319 11 (2021).

[4] Skinner, et al., *supra note 2*, at 11.

[5] Skinner, et al., *supra note 2*, at 11.

[6] Skinner, et al., *supra note 2*, at 11.

[7] Skinner, et al., *supra note 2*, at 12.

[8] Skinner, et al., *supra note 2*, at 12.

[9] H.R. 1319, 117th Cong. § 2003(7) (2021).

[10] H.R. 1319, 117th Cong. § 2003(5) (2021).

[11] Kerry Murakami, *COVID Bill Would Leave It to Biden Whether Undocumented Students Get Help*, Inside Higher Ed (Feb. 26, 2021).

[12] H.R. 1319, 117th Cong. § 2013 (c)(2) (2021).

[13] H.R. 1319, 117th Cong. § 2013 (2021).

[14] H.R. 1319, 117th Cong. § 2013(b)(1) (2021)

[15] H.R. 1319, 117th Cong. § 9675 (2021).

[16] 26 U.S.C. § 108(f) (2019).

[17] 26 U.S.C. § 108(f) (2019).

[18] Press Release, The White House, Pausing Federal Student Loan Payments (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/pausing-federal-student-loan-payments>.

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