

COVID-19 CARES Act Relief for Higher Education

Unprecedented in scale and scope, a \$2 trillion stimulus bill was recently signed by President Trump. The *Coronavirus Aid, Relief, and Economic Security Act* (CARES Act) includes relief for individual Americans, health care workers, small businesses and certain industries hit hard by the coronavirus pandemic.

This is the third relief package to address the effects of the SARS-CoV-2 virus and the incidence of COVID-19 (COVID-19). The first package included \$8.3 billion for the health care system and the second, the *Families First Coronavirus Response Act* (FFCRA), provided \$150 billion for sick leave, unemployment and emergency testing. See the **BKD Thoughtware**[®] article [Families First Coronavirus Response Act to Provide Employer Tax Credits](#) for more information.

This article focuses on colleges and universities that are uniquely vulnerable to the effect of the COVID-19 pandemic. Many higher education institutions have closed their campuses and are navigating distance learning. Some schools have started refunding fees for housing and food plans or providing credits for the next semester and are struggling to pay faculty and staff salaries. The two most critical issues facing schools are cash flow through the summer months and the return of students and the size of the new freshman class in the fall.

The CARES Act falls short of the relief sought by the industry lobby. For ease of reference, this article includes section numbers to help navigate the 900-page CARES Act.

Funding Provisions (Title VIII)

U.S. Department of Education

The CARES Act allocates \$30.8 billion to the Education Stabilization Fund, which is broken into three major components: Higher Education Emergency Relief Fund – \$14 billion; Elementary and Secondary Emergency Relief Fund – \$13 billion; and the Governor’s Emergency Education Relief Fund – \$3 billion.

Higher Education Emergency Relief Fund (Section 18004)

The CARES Act breaks higher education relief into several categories: 90 percent of the total fund, or \$12.5 billion, will be allocated to institutions with 75 percent on Pell Grant-eligible students and 25 percent on remaining enrollment (not Pell-eligible). The Pell Grant-based allocation helps ensure that institutions that service low-income students can continue to meet their needs.

The CARES Act further allocates 50 percent of the \$12.5 billion specifically for emergency financial aid grants to students for expenses related to the disruption of campus operations due to COVID-19 (including eligible expenses under a student’s cost of attendance, such as food, housing, course materials, technology, health care and child care).

The remaining \$6.25 billion can be used to cover any costs associated with significant changes to the delivery of instruction due to COVID-19, so long as such costs do not include payment to contractors for the provision of pre-enrollment recruitment activities; endowments; or capital outlays associated with facilities related to athletics, sectarian instruction or religious worship.

Seven-and-a-half percent of the total fund, or \$1 billion, will be available for additional awards to be allocated by the Secretary of Education based on current allocations under the *Further Consolidated Appropriations Act*. These awards can be used to defray expenses including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings and payroll incurred by institutions of higher education and for grants to students for any component of the student’s cost of attendance, including food, housing, course materials, technology, health care and child care.

The CARES Act reserves \$350 million for higher education institutions with the greatest unmet need to be used to defray expenses (including lost revenue, reimbursement for expenses already incurred, technology costs associated with a transition to distance education, faculty and staff trainings and payroll) incurred by higher education institutions and for grants to students for any component of the student's cost of attendance, including food, housing, course materials, technology, health care and child care.

For these grants, the Secretary shall give priority to any higher education institution that is not otherwise eligible for at least \$500,000 of the previously mentioned \$12.5 billion or \$1 billion fund appropriations and demonstrates significant unmet COVID-19 expenses.

Gallaudet and Howard Universities received separate direct allocations of \$7 million and \$13 million, respectively.

Assistance for Workers, Families & Businesses (Title II)

Employee Retention Credit (§2301)

The CARES Act will allow a credit against applicable employment taxes for each calendar quarter in an amount equal to 50 percent of the qualified wages up to \$10,000, resulting in a maximum credit of \$5,000 per employee. To qualify for the credit, an employer must meet all the following criteria:

1. The employer must have carried on a trade or business during calendar year 2020.
2. The operation of that trade or business is either:
 - a. Fully or partially suspended due to orders from an appropriate governmental authority limiting commerce, travel or group meetings due to COVID-19, or
 - b. Receiving gross receipts, for at least one calendar quarter, that are less than 50 percent of the gross receipts received during the same calendar quarter(s) in the prior year. This period of significant decline in gross receipts is recognized until the gross receipts for a calendar quarter are greater than 80 percent of gross receipts for the same calendar quarter in the prior year.

The rules governing whether employers qualify for the credit depend on the number of employees who work for the employer. For employers with more than 100 full-time employees during 2019, an employee must be unable to provide services due to the circumstances outlined in 2a or 2b above. For employers with 100 or fewer full-time employees, the credit is allowed regardless of whether an employee is able to provide services, as long as the circumstances outlined in 2a or 2b above are met.

The CARES Act includes anti-abuse measures that prevent employers from double-counting wages used to determine the employee retention credit in the calculation of other credits such as the Work Opportunity Tax Credit under Internal Revenue Code (IRC) §51 or the Employer Credit for Paid Family and Medical Leave under IRC §45S. In addition, employers receiving small business interruption loans (covered below) are not eligible for the employee retention credit.

Delayed Payment of Employer Payroll Taxes (§2302)

The CARES Act expands the payroll tax relief provided under the FFCRA by allowing employers to delay remittance of their share of Social Security tax that would have been deposited between the date of the CARES Act's enactment and December 31, 2020. Instead, 50 percent of those taxes must be deposited by December 31, 2021, and the remainder deposited by December 31, 2022.

Similar relief is provided for self-employed individuals under the CARES Act. However, those taxpayers still must pay 50 percent of the Social Security tax portion of these taxes, *i.e.*, the employee's share, in the same manner as usual. Employers who have had indebtedness forgiven under the *Small Business Act* are not eligible for this payroll and self-employment tax deferral relief.

Net Operating Losses (§2303)

Under the CARES Act, the current net operating loss (NOL) rules—put in place by the *Tax Cuts and Jobs Act* (TCJA)—are temporarily revised to allow losses arising in tax years 2018, 2019 or 2020 to be carried back five years. In addition, the provision limiting NOLs to only 80 percent of a taxpayer's taxable income is suspended for taxable years beginning before January 1, 2021, allowing companies to fully offset taxable income by such carrybacks or carryforwards.

The CARES Act also provides a technical correction to the TCJA to retroactively align the effective date of the NOL limitation and NOL carryback/carryforward provisions.

Qualified Improvement Property (§2307)

The CARES Act corrects a provision in the TCJA so that businesses will be able to immediately write off costs associated with improving facilities instead of having to depreciate those improvements over the building's 39-year life. Companies would be allowed to amend a prior year return.

Education Provisions (§3501–3519)

The CARES Act provides several areas of relief for educational institutions:

- Waives the institutional matching requirement for campus-based aid programs. Allows institutions to transfer unused work-study funds to be used for supplemental grants.
- Allows institutions to award additional Federal Supplemental Educational Opportunity Grant funds to students affected by COVID-19.
- Allows institutions to issue work-study payments to students who are unable to work due to workplace closures as a lump sum or in payments similar to paychecks.
- For students who dropped out of school as a result of COVID-19, it excludes the term from counting toward lifetime subsidized loan eligibility.
- For students who dropped out of school as a result of COVID-19, it excludes the term from counting toward lifetime Pell eligibility.
- For students who dropped out of school as a result of COVID-19, the student is not required to return Pell grants or federal student loans to the Secretary of Education. It also waives the requirement that institutions calculate the amount of grant or loan assistance that the institution must return to the Secretary of Education in the case of students who dropped out of school as a result of COVID-19.
- For students who dropped out of school as a result of COVID-19, the students' grades do not affect their federal academic requirements to continue to receive Pell Grants or student loans.
- Permits foreign institutions to offer distance learning to U.S. students receiving Title IV funds for the duration of the COVID-19 declaration of disaster.
- Provides the Secretary of Education with waiver authority to provide waivers from the *Elementary and Secondary Education Act*, except civil rights laws, that are necessary and appropriate due to the COVID-19 declaration of disaster.
- Authorizes the Secretary of Education to defer payments on current Historically Black Colleges and Universities (HBCU) Capital Financing loans during the national emergency period so HBCUs can devote financial resources to COVID-19 efforts.
- Requires the Secretary of Education to defer student loan payments, principal and interest for six months, through September 30, 2020, without penalty to the borrower for all federally owned loans. This provides relief for more than 95 percent of student loan borrowers.

- Provides participants serving in the National Service Corps programs with the educational award they were due to receive before their duties had been suspended or placed on hold during the COVID-19 declaration of disaster. Extends the age limits and the terms of service to allow individuals serving in national service programs to continue participating in programs after the COVID-19 declaration of disaster ends.
- Provides local workforce boards with additional flexibility to use funds received under the *Workforce Innovation and Opportunity Act* for administrative costs, including for online resources. Allows governors to use reserved workforce funds on rapid response activities in response to COVID-19.
- Authorizes the Secretary of Education to waive certain outcome requirements for fiscal year 2021 grant programs for HBCUs and other minority-serving institutions.
- Authorizes the Secretary of Education to waive or modify current allowable uses of funds for institutional grant programs (TRIO/GEAR UP/Title III/Title V/and sections of Title VII) so colleges can redeploy resources and services to COVID-19 efforts. Permits institutions to request waivers from the Secretary of Education for financial matching requirements in competitive grant and other MSI grant programs in the *Higher Education Act* so colleges can devote institutional resources to COVID-19 efforts.
- For teachers who could not finish their year of teaching service as a result of COVID-19, their partial year of service shall be counted as a full year of service toward TEACH grant obligations or Teacher Loan Forgiveness. Waives a requirement that teachers must serve consecutive years of teaching service for Teacher Loan Forgiveness eligibility, if a teacher's service is not consecutive as a result of COVID-19.

Labor Provisions (§3601–3611)

This section of the CARES Act includes clarifications on several issues, most notably:

- Creates a limitation stating an employer shall not be required to pay more than \$200 per day and \$10,000 in the aggregate for each employee under this section.
- Creates a limitation stating an employer shall not be required to pay more than \$511 per day and \$5,110 in the aggregate for sick leave or more than \$200 per day and \$2,000 in the aggregate to care for a quarantined individual or child for each employee under this section.
- Allows employees who were laid off by an employer on March 1, 2020, or later to have access to paid family and medical leave in certain instances if they are rehired by the employer. Employee would have had to have worked for the employer for at least 30 days prior to being laid off.

ERISA & Pension Relief (§3607–3609)

- Gives the U.S. Department of Labor the ability to postpone certain ERISA filing deadlines for a period of up to one year in the case of a public health emergency.
- Provides single employer pension plan companies with more time to meet their funding obligations by delaying the due date for any contribution otherwise due during 2020 until January 1, 2021. At that time, contributions due earlier would be due with interest. The bill also provides that a plan's status for benefit restrictions as of December 31, 2019, will apply throughout 2020.

Funding Provisions (Title VII)

U.S. Department of the Interior

- Bureau of Indian Education – \$69 million for funding for tribal colleges and universities, salaries, transportation and IT. No less than \$20 million of this total will be allocated for tribal colleges and universities.

Small Business Administration (SBA) (Title I)

This relief may only benefit small colleges because of SBA limits on the number of employees

[Federal Register 13 CFR § 121.106 How does SBA calculate number of employees?](#)

In determining a concern's number of employees, SBA counts all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern. SBA will consider the totality of the circumstances, including criteria used by the IRS for Federal income tax purposes, in determining whether individuals are employees of a concern. Volunteers (i.e., individuals who receive no compensation, including no in-kind compensation, for work performed) are not considered employees.

Payroll Protection Program (PPP) (§1102)

The 7(a)-loan program, administered by the SBA, provides financial assistance to small businesses. The CARES Act authorizes an additional \$349 billion for general 7(a) business loans. For SBA Express loans, the statutory \$350,000 limit is increased to \$1 million through December 31, 2020. In general, the SBA responds to Express loans within 36 hours (compared to standard 7(a) loans, which may take weeks to process).

Recipients of 7(a) loans may be eligible for loan forgiveness on covered loans in an amount equal to the sum of the costs incurred for an eight-week period starting on the origination date of the loan between February 15, 2020, and June 30, 2020, due to payroll cost, mortgage interest payments, rent or utility payments. The CARES Act also gives the SBA authority to provide paycheck protection loans to help employers cover costs, including wages, paid leave and state taxes on employee wages. These benefits are available to employers of not more than the greater of 500 employees or, if applicable, the number of employees per organization within the industry as determined by SBA's sizing standards, including nonprofit organizations.

Borrower and lenders fees are waived. The "credit elsewhere" test and personal guaranteed requirements also are waived.

A borrower is limited from receiving PPP assistance and an Economic Injury Disaster Loan (EIDL) through SBA for the same purpose. A borrower who has an EIDL loan unrelated to COVID-19 that was made after January 31, 2020, can apply for a PPP loan, with an option to refinance the EIDL loan into the PPP loan. The emergency EIDL grant award of up to \$10,000 would be subtracted from the amount forgiven under the PPP.

Entrepreneurial Development Programs (§1103)

The CARES Act sets aside \$265 million for a small business concern that has experienced any of the following as a result of COVID-19:

- Supply chain disruptions, including changes in:
 - Quantity and lead time, including the number of shipments of components and delays in shipments
 - Quality, including shortages in supply for quality control reasons
 - Technology, including a compromised payment network

- Staffing challenges
- A decrease in gross receipts or customers
- A closure

Loan Forgiveness (§1106)

Borrowers will be eligible for loan forgiveness equal to the amount spent by the borrower during an eight-week period after the origination date of the loan on payroll costs; interest payment on any mortgage incurred prior to February 15, 2020; payment of rent on any lease in force prior to February 15, 2020; and payment on any utility for which service began before February 15, 2020. Amounts forgiven may not exceed the loan's principal amount. Eligible payroll costs do not include compensation exceeding \$100,000 in wages. Forgiveness on a covered loan is equal to the sum of the following payroll costs incurred during the covered eight-week period compared to the previous year or time period, proportionate to maintaining employees and wages:

- Payroll costs plus any interest payment on any covered mortgage obligation (but not prepayments) plus any payment on any covered rent obligation plus any covered utility payment.
- The amount forgiven will be reduced proportionally by any reduction in employees retained compared to the monthly average number of full-time equivalent employees from February 15 to June 30, 2019, or at the election of the applicant, the monthly average of full-time equivalent employees from January 1 to February 29, 2020. This also is reduced by the reduction in pay of any employee beyond 25 percent of their compensation for the most recent full quarter before the eight-week covered period. To encourage employers to rehire any employees who have already been laid off due to COVID-19, borrowers that rehire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period.

Emergency EIDL Grants (§1110)

The CARES Act allocates \$10 billion for emergency grants and expands eligibility for access to EIDLs to include tribal businesses, cooperatives and employee stock ownership plans with fewer than 500 employees or any individual operating as a sole proprietor or independent contractor for the 2020 calendar year. These new EIDLs also include an option for a \$10,000 cash advance within three days of application that does not have to be paid back—even if the borrower's application is subsequently rejected. The advance must be used to:

- Provide paid sick leave to employees unable to work due to COVID-19
- Maintain payroll to retain employees during business disruptions or substantial slowdowns
- Meet increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains
- Make rent or mortgage payments
- Repay obligations that cannot be met due to revenue losses

Subsidy for Certain SBA Loan Payments (§1112)

The CARES Act allocated \$17 billion for loan subsidies on existing 7(a) (including Community Advantage), 504 or microloan products; however, PPP loans are not covered.

The SBA must pay the principal, interest and any associated fees that are owed on the covered loans for a six-month period starting on the next payment due. Loans that are already on deferment will receive six months of payment by the SBA beginning with the first payment after the deferral period. Loans made up until six months after enactment also will receive a full six months of loan payments by the SBA.

The SBA must make payments no later than 30 days after the date on which the first payment is due. This requires the SBA to still make payments even if the loan was sold on the secondary market.

The SBA must encourage lenders to provide deferments and allows lenders, up to one year after enactment, to extend the maturity of SBA loans in deferment beyond existing statutory limits.

Conclusion

BKD will continue to follow this developing situation. Visit [BKD's COVID-19 Resource Center](#) to learn more. If you have questions about these changes, contact your **BKD Trusted Advisor**™ today.

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