

Practice Update

The CARES ACT and Higher Education Institutions

March 27, 2020

As the Coronavirus Disease 2019 (COVID-19) pandemic continues to spread, industries across the nation are awaiting the resulting financial implications which will surely create a new reality which they must operate within. The higher education industry is no exception, with institutions across the nation closing their campuses to faculty and students, cancelling new student campus visits, and cancelling commencement ceremonies.

In response to growing financial concerns, Congress passed S. 3548, the “Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which was introduced by Senate Majority Leader Mitch McConnell (R-KY) last Thursday (March 19, 2020). The CARES Act follows up on two earlier stimulus bills passed by Congress. H.R. 6074 (signed into law March 6, 2020), appropriated \$8.3 billion in emergency funding to a host of federal agencies (e.g. the Food and Drug Administration, the Centers for Disease Control and Prevention) to strengthen their COVID-19 responses. As the pandemic’s effects continued to grow, Congress subsequently passed H.R. 6201 (the Families First Coronavirus Response Act), passed March 18, 2020, which, amongst other things, provides free testing, paid sick leave for certain employees, and additional funding to food programs (e.g. Supplemental Nutrition Assistance Program or SNAP).

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The CARES Act, which appropriates \$2 trillion dollars in funds, provides direct funding to individuals (up to \$1,200), as well as funding to a host of sectors, including \$30.750 billion for an Education Stabilization Fund to assist the education sector. Specifically with regard to higher education institutions, the CARES Act (and the Education Stabilization Fund) provide, amongst other things:

Student Aid and Institutional Relief (Part A)

- Waives institutional matching requirement for campus-based aid programs, while also permitting institutions to transfer and use unused work-study funds for supplemental grants;
- Permits institutions to award additional Supplemental Educational Opportunity Grant (SEOG) funds to students for emergency financial aid grants;
- Authorization to pay students Federal Work-Study funding during the period in which such student was unable to work due to work place closures;
- Permits students who withdrew from school as a result of COVID-19 to not return Pell grants or federal student loans. Further, waives institutional requirement to calculate amount of federal financial assistance which must be returned as a result of student withdrawing;
- Permits foreign institutions to offer distance learning to students receiving Title IV funding;
- Authorizes deferment of payments on current historically black college and university (HBCU) Capital Financing loans;
- Authorizes waiving of certain outcome requirements for FY2021 grant programs for HBCU's and other Minority Serving Institutions;
- Deferring federal student loan payments (principal and interest) and involuntary federal student loan collections for six months (through September 30, 2020); and

- Maintaining of grant and loan eligibility for students who withdraw during this academic term.

Appropriations (Part B)

- Approximately \$14.25 billion for higher education institutional funding.
 - At least 50 percent of funds disbursed to higher education institutions must be used to provide emergency grants to students for expenses related to disruption of campus operations.
 - Funds may be used to offset higher education expenses, such as: lost revenue, technology costs associated with a transition to distance education, and grants to students for food, housing, course materials, technology, health care, and child care
- Another approximate \$3 billion will be allocated to state governor's to provide Emergency Education Relief Grants to be used at the discretion of state governor's for educational institutions (including higher education institutions).
- Approximately \$307 million to states with institutions suffering the "highest coronavirus burden."
- Approximately \$1 billion allocated for minority serving institutions, including HBCU's and Tribal Colleges and Universities (TCU's).
- \$13 million specifically to Howard University and \$7 million to Gallaudet University, both being federally chartered universities.

Though not exclusively targeted to higher education institutions, below are provisions which higher education institutions should nonetheless be cognizant of:

- Charitable deduction and contribution provisions: Creates an above the line charitable deduction for 2020, with a maximum deduction of \$300.

Further, suspends 50 percent of adjusted gross income cap for deductions in 2020.

- Modification of limitations on charitable contributions during 2020: Increases the limitations on deductions for charitable contributions by individuals who itemize, as well as corporations. Further, suspends the 50 percent of adjusted gross income limitation for individuals and raises the 25 percent cap for corporations for 2020.
- Delay of payment of employer payroll taxes: Allows employers to delay the payment of employer social security payroll taxes until the end of the year; funds must be repaid – one half by the end of 2021 and the rest by the end of 2022.
- Exclusion for certain employer payments of student loans: Allows employers to provide a student loan repayment benefit (up to \$5,250 annually) to employees on a tax-free basis. It applies to any student loan payments made by an employer on behalf of an employee after date of enactment and before January 1, 2021.

Akerman's Higher Education and Collegiate Athletics Practice has experienced policy advisors who are happy to assist institutions that want to take advantage of the above mentioned relief and appropriations. As such, please contact us for any assistance. In the interim, Akerman's Higher Education and Collegiate Athletics team will stay abreast of the CARES Act's implementation, as well as any additional amendments which may be made to the CARES Act.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update

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