

# Chapman Client Alert

April 1, 2020

Current Issues Relevant to Our Clients

## The CARES Act—Notable Provisions for Institutions of Higher Education

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act or the Act), a bill designed to provide financial support and resources to individuals and businesses affected by the COVID-19 pandemic, was signed into law on March 27, 2020.<sup>1</sup> The \$2 trillion stimulus bill is the largest stimulus bill in U.S. history and Congress' third major piece of legislation to address the COVID-19 crisis.<sup>2</sup> This Alert summarizes notable CARES Act provisions for Institutions of Higher Education.<sup>3</sup> Please note that this summary is not exhaustive and there may be additional provisions in the Act of interest to your Institution of Higher Education. Additionally, the CARES Act may not be the last word from Congress on COVID-19 relief for the industry, as there is already talk of a fourth phase of legislation once Congress reconvenes at the end of April.

For additional Chapman Insights addressing legal and regulatory developments related to the COVID-19 crisis, please visit our [COVID-19 Legal, Regulatory, and Legislative Developments](#) webpage.

### Education Stabilization Fund (§18001 – §18006 of the CARES Act)

The Education Stabilization Fund (Fund) is created under the CARES Act in the total amount of \$30.75 billion.<sup>4</sup> The Fund was created with the purpose to prevent, prepare for and respond to coronavirus, domestically or internationally, and will remain available through September 30, 2021.<sup>5</sup> The Fund is allocated among the following three categories:

1. Approximately \$13.953 billion to the Higher Education Emergency Relief Fund<sup>6</sup>;
2. Approximately \$13.229 billion to the Elementary and Secondary School Emergency Relief Fund<sup>7</sup>; and
3. Approximately \$2.953 billion to the Governor's Emergency Education Relief Fund.<sup>8</sup>

Institutions of Higher Education will receive direct funding under the Higher Education Emergency Relief Fund from the U.S. Department of Education. If an Institution of Higher Education receives a grant under the Fund, then the Institution of Higher Education "shall to the greatest extent practicable, continue to pay its employees and contractors during the period of any disruptions or closures related to coronavirus."<sup>9</sup> The dollars allocated to the Higher Education Emergency Relief Fund are distributed as follows (§18004):

- (a) 90% (\$12.558 billion) will be disbursed directly to Institutions of Higher Education using the existing Title IV distribution system in order for Institutions of Higher Education to prevent, prepare for, and respond to coronavirus.<sup>10</sup>
  - (i) 75% will be apportioned according to the relative share of full-time equivalent enrollment of Federal Pell Grant recipients who are not exclusively enrolled in distance education courses prior to the coronavirus emergency.
  - (ii) 25% will be apportioned according to the relative share of full-time equivalent enrollment of students who are not Federal Pell Grant recipients who are not exclusively enrolled in distance education courses prior to the coronavirus emergency.<sup>11</sup>
- (b) 7.5% (\$1.047 billion) is reserved for minority-serving institutions.<sup>12</sup>
- (c) 2.5% (\$349 million) is reserved for grants to smaller Institutions of Higher Education that have the "greatest unmet needs related to coronavirus."<sup>13</sup> It should be noted that priority will be given to any Institution of Higher Education that is not eligible for grants under subparagraph (a) above of at least \$500,000 and demonstrates "significant unmet needs related to expenses associated with coronavirus."<sup>14</sup>

Institutions of Higher Education may use funds received under the Higher Education Emergency Fund for “costs associated with significant changes to the delivery of instruction due to coronavirus.”<sup>15</sup> However, grants received under the Higher Education Emergency Fund may not be used for “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.”<sup>16</sup> Moreover, Institutions of Higher Education “shall use no less than 50% of such funds to provide emergency financial aid grants to students for expenses related to disruption of campus operations due to coronavirus.”<sup>17</sup>

### Other CARES Act Provisions Relevant to Institutions of Higher Education

- The Internal Revenue Code has been modified by the CARES Act by providing tax incentives that will hopefully encourage charitable giving. (§2204 and §2205)
  - Entities that are organized under Internal Revenue Code 501(c)(3), including Institutions of Higher Education, whose operations were fully or partially suspended due to orders by a governmental authority, are eligible to receive a credit against applicable employment taxes for each calendar quarter in an amount equal to 50% of the qualified wages with respect to each employee of such employer. (§2301)
  - The CARES Act expands payroll tax relief for employers by allowing employers to defer payment of their share of payroll taxes that would be due December 31, 2020. Under the CARES Act, 50% of those payroll taxes must be paid by December 31, 2021 and the remaining 50% to be paid by December 31, 2022. (§2302)
  - The Treasury Secretary is directed under the CARES Act to establish a program that will provide low-interest loans for “eligible businesses,”<sup>18</sup> which include nonprofit organizations, with between 500 to 10,000 employees. In order for a nonprofit organization to receive a loan under Section 4003 of the Act, they must provide a good-faith certification that they satisfy certain criteria including, but not limited to, the following: (i) the borrower intends to maintain at least 90% of their current workforce, (ii) the borrower will not outsource or offshore jobs during the loan period or two years after the repayment of the loan, (iii) the company will not abrogate existing collective bargaining agreements with labor unions and (iv) the company will remain neutral regarding current or future union organizing activity. (§4003)
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- ### Brief Overview of COVID-19 Pandemic Education Relief Act of 2020 (Education Relief Act)<sup>19</sup>
- Below is a general summary of provisions relating to the Education Relief Act under the CARES Act. The Education Relief Act provides waivers and other flexibility for Institutions of Higher Education relating to federal student aid, where necessitated by the COVID-19 pandemic. Please see the text of each cited section for specific details relating to provisions summarized below.
- **Campus-Based Aid Waivers:** Waives the matching requirement that Institutions of Higher Education match federal funds in certain campus-based programs for years 2019-2020 and 2020-2021. (§3503)
  - **Use of Supplemental Educational Opportunity Grants for Emergency Aid:** Provides that Institutions of Higher Education may award additional Supplemental Educational Opportunity Grants as funding for emergency aid to students for unmet financial needs and unexpected expenses as a result of a qualifying emergency<sup>20</sup>. (§3504)
  - **Federal Work-Study During a Qualifying Emergency:** Provides the ability to continue to issue Federal Work Study payments for a period of time (not to exceed one academic year) to students whom are unable to fulfill their work-study obligations for all or part of such academic year due a qualifying emergency. (§3505)
  - **Adjustment of Subsidized Loan Usage Limits:** Excludes loans borrowed by a student from counting towards annual or cumulative limits if the borrower is unable to complete the term due to a qualifying emergency. (§3506)
  - **Exclusion from Federal Pell Grant Duration Limit:** Allows for the exclusion of Pell Grants awarded from counting towards annual or cumulative limits if a Pell Grant recipient is unable to complete the term due to a qualifying emergency. (§3507)
  - **Institutional Refunds and Federal Student Loan Flexibility:** Allows for the suspension of an Institution of Higher Education’s obligation to return Title IV funds, if a student withdraws during a payment period due to a qualifying emergency. Additionally, allows for the suspension of a student’s obligation to return Title IV aid that they have received, if the student withdraws during a payment period due to a qualifying emergency. Provides relief to borrowers of the obligation to repay loans that were taken out if they withdraw due to a qualifying emergency during the payment period those loans were

borrowed. Also, provides Institutions of Higher Education to allow students to take a leave of absence without needing to return in the same semester. (§3508)

- **Satisfactory Academic Progress:** Provides that Institutions of Higher Education, in determining whether a student is maintaining satisfactory academic progress, may exclude attempted credits that students do not complete as a result of a qualifying emergency. (§3509)
- **Continuing Education at Affected Foreign Institutions:** Allows for otherwise eligible programs at foreign institutions to be offered via distance education during a public health emergency. (§3510)
- **Historically Black Colleges and Universities (HBCU) Capital Financing:** Permits the deferment of repayments for certain loans to HBCUs. (§3512)
- **Temporary Relief for Federal Student Loan Borrowers:** Suspends student federal loan payments through September 30, 2020, without interest accrual. (§3513)

- **Waiver Authority and Reporting Requirement for Institutional Aid:** Authorizes the Secretary to be able to waive certain statutory provisions relating to the distribution and uses of grant funding for minority-serving institutions, which includes graduate programs at HBCUs. (§3517)
- **Authorized Uses and Other Modifications of Grants:** Allows the Secretary to waive requirements regarding the allowable uses of grant funding and requirements on matching grants at the request of the institution. (§3518)

### [For More Information](#)

If you would like further information concerning the matters discussed in this article, please contact the Chapman attorney with whom you regularly work.

1 The H.R. 748.

2 The first and second phases of legislation, respectively, are: (1) the Corona Virus Preparedness and Response Supplemental Appropriations Act which was signed into law on March 6, 2020, and (2) the Families First Coronavirus Response Act, which was signed into law on March 18, 2020.

3 “Institutions of Higher Education” as defined in 20 U.S.C.A. §1002.

4 §18001 of the Act.

5 §18001 of the Act.

6 §18004 of the Act.

7 §18003 of the Act.

8 §18002 of the Act.

9 §18006 of the Act.

10 §18004(a)(1) of the Act.

11 §18004(a)(1) of the Act.

12 §18004(a)(2) of the Act.

13 §18004(a)(3) of the Act.

14 §18004(d) of the Act.

15 §18004(c) of the Act.

16 §18004(c) of the Act.

- 17 §18004(c) of the Act.
- 18 “Eligible Business” means a United States business that has not otherwise received adequate economic relief in the form of loans or loan guarantees provided under the CARES Act.
- 19 Part IV, Subtitle B of the Act.
- 20 “Qualifying emergency” as defined under the Education Relief Act means (A) a public health emergency related to the coronavirus declared by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Services Act (42 U.S.C, 247d), (B) an event related to the coronavirus for which the President declared a major disaster or an emergency under section 401 or 501, respectively, of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 and 5191), or (C) a national emergency related to the coronavirus declared by the President under section 201 of the National Emergencies Act (50 U.S. C. 1601 et. seq).

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